

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

+ **RFA No.530/2001**

% **3rd March, 2011**

M/S. SANTOSHI PIPES (P) LTD. Appellant

Through: None.

VERSUS

SHRI SURAJ PRASAD GUPTA Respondent

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 17.1.2011. Today, it is effective item No.4 and though it is 3.00 P.M. nobody has chosen to appear for the parties. I have, therefore, perused the record and am proceeding to dispose of the appeal.

2. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 30.8.2001 whereby the suit of the

respondent/plaintiff was decreed for recovery on account of goods/chemicals supplied to the appellant/defendant.

3. The facts of the case are that the respondent/plaintiff supplied chemicals to the appellant/defendant during the month of April and May, 1994 of the total value of Rs.3,31,116/-. The appellant/defendant only made a payment of Rs. 1,65,087/- leaving a balance of Rs.1,66,029/- and for recovery of which suit was filed alongwith claim for freight charges and the C forms pertaining to sales tax.

4. The appellant/defendant contested the suit on the ground that the rate for supply of goods was agreed at Rs.4,000/- per tonne and not Rs.7,200/- per tonne. It was also alleged that the goods supplied by the respondent/plaintiff were defective and because of the same, the PVC pipes manufactured were rejected by the Government of Rajasthan to whom the pipes were supplied.

5. The trial Court after the pleadings were complete, framed the following issues:-

- “1. Whether the plaintiff did not supply goods to the defendant vide particulars mentioned in para 3 of the plaint?
2. Whether the plaintiff is not entitled to freight charges?
3. Whether the defendant is not liable to furnish C forms against the supplies?
4. Whether the plaintiff supplied defective material and the same was rejected by the defendant?

5. Whether the plaintiff is entitled to interest? If so, at what rate and to what amount?
6. Whether the defendant is entitled to counter claim?
7. Whether the counter claim of defendant is within limitation?
8. Whether the plaintiff had agreed to supply calcium carbonate @ Rs.4,000/- per metric tonne?"

6. So far as the issue Nos.1,2,3 and 8 are concerned, the trial Court has held that the rate at which the goods were to be supplied was Rs.7,200/- per tonne and not Rs.4,000/- per tonne. The trial Court disbelieved the purchase order Ex.DW2/A filed by the appellant and held that the same was a forged document. In any case, the trial Court held that the respondent/plaintiff had raised the bills @ Rs.7,200/- per metric tonne and no protest was ever raised to the rate by which the bills were made. On the contrary, even after the last supply was made on 31.5.1994, the appellant/defendant continued to make payment up to 3.12.1994 without any protest with regard to the rate. I therefore agree with the findings and conclusions of the trial Court that the rate at which the articles were to be supplied was Rs.7,200/- per metric tonne and not Rs.4,000/- per metric tonne. The relevant paras of the impugned judgment and decree are paras 12 to 15 and with which I agree and the same read as under:-

"12. On Examination of the bills Ex.PW1/1 to Ex.PW1/10, it is seen tht the plaintiff charged @ Rs.7200/- per metric tone. The contention of the defendant, however, is that the agreed rate was only Rs.4,000/- per metric tone. To prove this contention, DW2 Sanjay Santoshi has produced the purchase order Ex.DW2/A. The purchase order purports to bear signature of the plaintiff at point B. PW1 S.P. Gupta was confronted with a photocopy of

purchase order and he disowned the signature on it. Be that as it may, the contents of the purchase order Ex.DW2/A are reproduced below:-

“The material is to be supplied @ Rs.4,000/- per tone FOR Khairthal (Distt. Alwar) tax paid. No other levies are to be paid by us. You have to supply 40 MT of calcium carbonate of standard quality suitable for manufacturing of ISI rigid UPVC pipes as desired.

Please note that if the material is found defective, unusable and of low quality, at any stage, the same will have to be lifted by you from our works at your own risk and cost and we shall not be held responsible for any damage and loss to you.”

13. Learned counsel for the plaintiff has contended that the purchase order Ex.DW2/A is a forged document. The rate at which the material was to be supplied, is mentioned at only one place in the purchase order and that too in digits and not in words. The digit “4” has obviously been typed after erasing the original digit with white ink. The erasure by white ink is visible to naked eye. Therefore, it can be said without hesitation that the purchase order Ex.DW2/A was tampered with before production in court and the rate mentioned in it does not reflect the real terms of agreement.

14. DW1 Dr. R.S. Santoshi admits that the bills were duly checked. He also admits that all the bills were raised @ Rs.7200/- per metric tone. He further admits that the defendant did not make any protest in writing as to why the bills were being raised @ Rs.7200/- PMT. On the contrary, the last supply was made by the plaintiff on 31.05.94 but the defendant continued to make payment upto 03.12.94 without any demur or protest. If the agreed rate for supply of calcium carbonate had been Rs.4000/- PMT as alleged in the Written Statement, the defendant would have naturally protested as to why the bills were being raised at a rate in excess of the stipulated rate and it would not have quietly made payment upto December, 1994.

15. DW2 Sanjay Santoshi has stated on cross examination that the defendant had been purchasing calcium carbonate from other suppliers prior to 1994. He also admitted that the defendant must be having the bills received from the other suppliers. The defendant could have produced those bills to show that the prevalent rate of calcium carbonate was Rs.4,000/- PMT and not Rs.7200/- PMT. The non-production of those bills also gives rise to an inference against the defendant.”

(emphasis added)

7. So far as the issue with regard to goods being defective is concerned, the trial Court has noted that though the appellant/defendant had a test laboratory, the chemicals were neither tested either before the manufacture of pipes or after their manufacture. Further, the inspection

report of the Government of Rajasthan showed that on visual and dimensional test, no defect was observed and which falsifies the stand of the witnesses, DW-1 and DW-2 of the appellant that bubbles developed on the surface of the pipes. In fact, the trial Court has noted that the inspection certificate of Government of Rajasthan shows that the quality of the raw material was very poor. The trial Court also noted that calcium carbonate, the chemical/material/goods supplied, forms only 10% of the material from which PVC pipes are manufactured. The trial Court has rightly noted that there is inconsistency in the deposition of DW-1 and DW-2 inasmuch as DW-1 stated that PVC pipes did not turn rigid whereas DW-2 stated that pipes broke down immediately after manufacture. Trial Court has also rightly noted that the story as put forth by the appellant that the pipes manufactured were defective cannot be believed because the inspection certificate DW2/B and DW2/C of the Government of Rajasthan are dated 6.6.1994 and 15.5.1994, however cheque for Rs.1 lac was given to the respondent/plaintiff by the appellant/defendant later on 8.8.1994 and another payment was made of Rs.20,000/- on 3.12.1994. Surely, if the goods were defective, the appellant/defendant would not have made such payment to the respondent. The relevant paras of the impugned judgment and decree, in this regard, are paras 20 to 23, and I agree with the conclusions contained in the same, these paras read as under:-

“20. Both DW1 R.S.Santoshi and DW2 Sanjay Santoshi admit on cross examination that there is a test laboratory in the factory of the defendant. They also admit that the calcium carbonate supplied by the plaintiff as

not tested in the laboratory either before manufacture of PVC pipes of even after rejection of PVC pipes by the Government of Rajasthan.

21. The defendant relied on two inspection certificates Ex.DW2/B and DW2/C. These reports show that rigid PVC pipes supplied by the defendant to PHED. Rajasthan were subjected to various tests. On “visual and dimensional” test of the pipes no defect was observed. This falsifies the statement of DW1 and DW2 that bubbles developed on the surface of pipes. At the foot of both inspection certificates, there is a note that the quality of raw material was very poor. On the basis of this note alone it cannot be said that the calcium carbonate supplied by the plaintiff was sub-standard or of poor quality. DW1 Dr.R.S.Santoshi himself says that calcium carbonate forms only 10% of the material. The note in the inspection certificates might have referred to the remaining 90% and not necessarily to the quality of calcium carbonate which was only 10%. Moreover, there is a material contradiction in the testimony of DW1 Dr.R.S.Santoshi states that after utilization of calcium carbonate supplied by the plaintiff the PVC pipes did not turn rigid, DW2 Sanjay Santoshi states that the pipes broke down immediately after manufacture. If the calcium carbonate supplied by the plaintiff was not suitable enough to reduce the flexibility of pipes as stated by DW1 R.S.Santoshi, the question of the pipes breaking down did not arise. This contradiction in testimony shows that the defendant is trying to make a lame excuse.

22. The plea of defective material is otherwise vague. The plaintiff supplied nearly 40 metric tonne of calcium carbonate. The defendant has not clarified as to how much of that quantity was utilized and how much remained unutilized.

23. The inspection certificates Ex.DW2/B and DW2/C bear the dated 6.6.94 and 15.5.94. Thus, PVC pipes manufactured by the defendant must have been rejected by the Government of Rajasthan in May and June, 1994. If the defendant really felt that the sub-standard quality of calcium carbonate supplied by the plaintiff was the real cause for the rejection of their pipes, they would to have made any payment to the plaintiff after June, 1994. DW1 Dr. R.S.Santoshi however, admits that a cheque for Rs.1,00,000/- was given to the plaintiff on 8.8.94. Another payment of Rs.20,000/- was made on 3.12.94.” (Emphasis added)

8. In view of the above, I do not find any illegality or perversity in the impugned judgment and decree which calls for interference by this Court

in appeal. The appeal is therefore dismissed. Interim orders are vacated. The security bond furnished by the respondent stands discharged. Parties are left to bear their own costs. Trial Court record be sent back.

March 03, 2011
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VALMIKI J. MEHTA, J.