

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

+ **RFA No.156/2003**

% **30th November, 2011**

M/S. M.S.O. BUILDING EMPLOYEES CONSUMER COOPERATIVE
STORE LIMITED Appellant

Through: Mr. Aditya Garg, Advocate.

versus

THE CHIEF ELECTION COMMISSIONER & ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This case is on the Regular Board of this Court since 4.7.2011.
No one appears for the respondents although it is 12.30 P.M. I have
therefore heard the counsel for the appellant and am proceeding to dispose
of the appeal.

2. The challenge by means of this Regular First Appeal under
Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned
judgment dated 7.8.2002 by which the suit of the appellant/plaintiff for
recovery of ₹ 4,90,000/- for having supplied furniture, stationery etc. was

dismissed.

3. The facts of the case are that the defendant No.2/respondent No.2/Election Commissioner had placed upon the appellant/plaintiff an order dated 20.11.1996 for supply of various articles such as furniture, stationery and other daily office needs items. The appellant/plaintiff received certain payments and the last payment was received in November, 1998. After supply of the goods, the appellant/plaintiff submitted a total bill of ₹ 12,16,905.30/- of which payment of only ₹ 9,95,106.50/- was received till November, 1998, leaving a balance of ₹ 2,21,798/- to be paid by the respondent No.2. The suit was therefore filed for recovery of this amount.

4. Defendant Nos.2 and 3/respondent Nos.2 and 3 contested the suit by filing a joint written statement. It was pleaded that the appellant was not registered with the Sales Tax Authorities and therefore the appellant/plaintiff had wrongly received an amount of ₹ 58,568/- towards sales tax. It was also contended that no amount was due and recoverable as complete payment was made. It was also pleaded that there were certain deficiencies with respect to goods supplied.

5. The trial Court, after completion of pleadings, framed the following issues:-

- “1. Whether the plaint has been signed and verified and the suit has been instituted by a duly authorized person? OPP
2. Whether the plaintiff is entitled to recover the amount claimed in the suit? OPP
3. Whether the plaintiff is entitled to recover the interest from the defendant? If so, at what rate, on what amount and for what period? OPP
4. Whether the suit of the plaintiff is liable to be dismissed for disclosing no cause of action?
5. Relief.”

6. The trial Court has dismissed the suit by firstly holding that the society was not registered because no document was proved by the appellant/plaintiff showing registration of the society. It was also held by the trial Court that the suit was not validly instituted.

In my opinion, these findings are clearly misconceived because once the defendant Nos.2 and 3/respondent Nos.2 and 3 admitted receiving the goods from the appellant/plaintiff it cannot question the status of the appellant/plaintiff. The legal entity of the appellant/plaintiff thus could not be doubted. So far as the valid institution of the suit is concerned, this issue has now been decided by the Supreme Court in the case of *United Bank of India Vs. Naresh Kumar AIR 1997 SC 3* wherein the Supreme Court has said that a suit should not be dismissed on the ground of hyper-technicalities, and once the suit is pursued till the end, the very fact that the suit is pursued

till the final stage, is sufficient to hold valid institution of the suit under Order 29 CPC. I therefore hold that suit was validly instituted and filed on behalf of the appellant/cooperative society.

7. The trial Court has also dismissed the suit by giving the finding with respect to issue No.2 holding that nothing was due and there were deficiencies in the goods supplied since there was allegedly no sufficient denial in the replication by the appellant/plaintiff to the contents of the written statement where such facts were pleaded, and which were therefore held deemed to be admitted, and thus the suit was held liable to be dismissed. The trial Court has very surprisingly given this finding by ignoring the fact that the appellant/plaintiff had already proved various documents for claiming amount due in the suit. Ex.PW1/1 to Ex.PW1/26 are copies of the bills under which the goods were supplied. Ex.PW1/27 and Ex.PW1/28 are letters dated 18.11.1997 and 14.9.1998 asking for payment. The document Ex.PW1/29 is the detailed statement showing balance of ₹ 4,26,415/-. The statement of account was proved and exhibited as Ex.PW1/31. A total of 36 documents in all were proved and exhibited as Ex.PW1/1 to Ex.PW1/36. The trial Court however dismissed the suit by giving the following findings on this issue in para 13 which reads as under:-

“ISSUE NO.2

13. Onus to prove this issue was upon the plaintiff in discharge of which the plaintiff has produced and examined. Sh. Satya Prakash Allen, who had deposed on certain material facts consistent to the claim of the plaintiff and in addition to the claim of the plaintiff and in addition to that he has proved the documents Ex.PW-1/1 to 1/26, but in view of my findings already recorded for Issue No.1, by which it has been held that the suit has not been signed, verified and instituted by a duly authorized person for and on behalf of the plaintiff, I find that the plaintiff cannot be held entitled to recover the amount claimed in the suit from the defendants. On the other hand, the defence raised by the defendants in para 8 of the WS, has not been denied by the plaintiff in its replication. Under para 8 of the WS on merit, the defendants had pleaded certain deficiencies, descripencies and duplication of the claim on certain amounts by specifying the bills and in response to those pleadings the plaintiff in its replication under para 8 made no denial, much less than specific denial. In view of the provision contained u/o 8 Rule 5 CPC, in case a material fact is alleged and the same is not specifically denied by the other party, the same is deemed to be admitted by the party who was supposed to specifically deny the same. In the present case, there is no denial much less than specific denial of the facts pleaded by the defendants in their WS, under para 8 clause (a) to (u) and therefore in the absence of any denial, much less than specific denial, I find that all the facts pleaded by the defendants in the WS under para 8 clause (a) to (u) stands admitted by the plaintiff in its pleadings in replication. That being so, the claim of the plaintiff stands successfully rebutted and falsified. In addition to that the defendants had contended that the plaintiff was not entitled to charge the Sales Tax on the ground that the plaintiff was not registered with the Sales Tax Department and its registration was cancelled in 1992 by document Ex.DW-3/1 and 3/2. On those facts and the documents there is no contradiction, rebuttal or infirmity and at the same time once the plaintiff had admittedly charged the Sales Tax in the bills proved by the

plaintiff, the plaintiff was under an obligation to affirmatively prove that it was registered with the Sales Tax Department and was duly authorized to charge the Sales Tax. But on record in the evidence no documents of registration with the Sales Tax Department has been proved in favour of the plaintiff and therefore, in the absence of any registration pleaded and proved in favour of the plaintiff, I find that the plaintiff was not entitled to charge and recover the Sales Tax from the defendants. Therefore, the amount that has been charged by the plaintiff from the defendants and has been specifically pleaded in the WS and that has not been denied, much less than specifically denied, I find that the evidence pleaded by the defendants has been admitted by the plaintiff and accordingly, I find that the defence taken by the defendants has substantial merit and the plaintiff was not entitled to charge any amount on account of Sales Tax and whatever amount has been charged, the same was absolutely illegal and without any authority and competence of the plaintiff. In those circumstances, the defendants are at liberty to take steps due in that regard, if they so desire. Accordingly, in view of these circumstances, I find that the plaintiff bitterly failed to prove its entitlement to recover any amount from the defendants. So, this issue stands decided in favour of the defendants and against the plaintiff.” (underlining added).

8. The aforesaid findings and conclusions of the trial Court are clearly illegal. Important issues of recovery of money as per the facts of the present case, where various documents have been proved, cannot be decided on a position of alleged deemed admission, that too in a replication filed to the written statement. As already stated above, all documents showing delivery of goods, letters asking for payment and the statement of account were duly proved and exhibited. Further merely because, and assuming that

the appellant/plaintiff was not registered with the Sales Tax Authorities, cannot mean that the respondent Nos.2 and 3/defendant Nos.2 and 3 can claim that the sales tax was not payable. If the appellant/plaintiff, as argued, did not deposit the sales tax, it was an issue between the appellant/plaintiff and the Sales Tax Department, however, there can be no advantage of this taken by the buyers/respondent Nos.2 and 3. I may note that the appellant/plaintiff is not a private individual but a co-operative society M/s. M.S.O. Building Employees, Consumer Cooperative Store Ltd., an entity which is therefore surely entitled to recovery of monies with respect to the goods supplied.

9. In view of the above, the appeal is accepted. The impugned judgment and decree dated 7.8.2002 dismissing the suit is set aside. The suit of the appellant/plaintiff will stand decreed against respondent Nos.2 and 3/defendant Nos.2 and 3 for a sum of ₹ 4,90,000/- alongwith pendente lite and future interest till payment @ 12% per annum simple. Parties are left to bear their own costs. Decree sheet be prepared. Trial Court record be sent back.

VALMIKI J. MEHTA, J

NOVEMBER 30, 2011

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RFA No.156/2003

Page 7 of 7