

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

+ **RFA No. 64/2003**

% **25th November, 2011**

MS. KALPANA Appellant
Through : Mr. Atul Nigam, Advocate.

versus

UNION OF INDIA & OTHERS Respondents
Through : Mr. Vinay Sabharwal with Ms. Neha
Sabharwal, Advocate for Respondent
No.2.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 9.10.2002 by which the suit of the appellant / plaintiff for recovery of ₹3,65,000/- was dismissed.

2. The case of the appellant / plaintiff before the Trial Court was that the appellant / plaintiff was under an agreement given a room in the school premises of the defendant No.2 / respondent No.2 for tailoring purposes and

which contract originally was from 1.4.1990 to 31.3.1991. The contract was extended upto 31.3.1992. It was alleged that the school uniforms had to be made available once the session began and the uniforms stitched for the students of the respondent No.2 / defendant No.2 were such that they could not be used by anybody else. It was pleaded that the respondent No. 2 refused to extend the contract and at which time, the appellant / plaintiff had a stock of school uniforms worth ₹2,33,709/-. It was further the case of the appellant / plaintiff that this stock was accepted by respondent No.2 / defendant No.2 at 20% discount on the rate list and were to be sold from INS India Canteen, but uniforms worth only ₹6,298/- could be sold. It was finally pleaded that on 4.6.1994 the lock of the room was found to be removed along with the entire stock of uniforms etc and, therefore, the appellant / plaintiff lodged a case of theft in Chanakaya Puri Police Station. The said stock was insured with the insurance company, i.e. the defendant No.3 in the suit. The subject suit was filed for recovery of moneys being the value of the stitched uniforms.

3. The respondent Nos. 1 and 2 / defendant Nos. 1 and 2 which are Union of India and School respectively contested the suit on the ground that Union of India was not a necessary party because the school was being run

by a society registered under the Societies Registration Act, 1860 which was a separate legal entity. It was further pleaded by the defendant No.2 / respondent No.2 / School that there was no contract with the appellant / plaintiff for the appellant / plaintiff keeping ready a particular number of uniforms and all that the contract envisaged was a room being given to the appellant / plaintiff from where she carried out her tailoring activities for privately providing uniforms to the students who would place orders for the same. It was argued that the appellant / plaintiff refused to vacate the room after refusal to grant her extension, and therefore, after information to the police, the possession of the room was taken back and the stock was thereafter kept in safe custody. The defendant No.3, insurance company pleaded that there was no theft and the police itself did not pursue the complaint lodged on the ground of theft and the FIR was not pursued as no theft was found.

4. After the pleadings were completed, the Trial Court framed the following issues:

- “1. Whether the plaintiff has not come with clean hands and suppressed the material facts, if so its effect? OPD
2. Whether there is no cause of action against the defendant no.3? OPD

3. Whether mis-appropriation of the goods by defendant no.2 is not covered under Insurance Policy? OPD
4. Whether the plaintiff is entitled for any amount in view of the allegations in the plaint as claimed? OPP
5. If the plaintiff is entitled for any interest, if so on what rate? OPP
6. Whether the suit is bad for mis-joinder of parties as alleged? OPD
7. Relief.”

5. The Trial Court has held that there was no contract given to the appellant / plaintiff for a particular number of uniforms and if the appellant / plaintiff kept a particular number of uniforms ready, the same was at her own convenience and not because of any contractual requirements. The Trial Court held that in spite of the respondent No.2 / defendant No.2 having no liability, it on humanitarian consideration, as per the direction of the concerned Rear Admiral, placed the stock of the appellant / plaintiff in the canteen which, however, could not be sold. The Trial Court held that this humanitarian gesture cannot fasten any liability upon the respondent No.2 / defendant No.2. The Trial Court also held that if the appellant / plaintiff kept a particular stock of uniforms ready, the same was at her own volition, and there was no duty upon the respondent No.2 to ensure that the same was

sold. The Trial Court has given some of the relevant findings, with which I agree and adopt, as under:

“47. I have given considered thought to the arguments submitted by counsels for both the parties. From the averments made in the plaint and the evidence led by the plaintiff, it is revealed that the plaintiff had a stock of stitched uniforms of the children, left with her after her contract came to an end. Naturally the plaintiff had been making efforts by meeting the Rear Admiral or other officials of the Naval Department to help her in disposing of the said stock of stitched school uniforms for the children. It is also revealed that some ways and means were suggested by the Rear Admiral to help the plaintiff to dispose of her stock of the said stitched uniforms; by putting the same to sell in INS Canteen or by suggesting the other contractor to purchase the same at 20% discount. But it appears that all the aforesaid efforts which were made in pursuance of the suggestions of the Rear Admiral failed.

48. Simply because the plaintiff gave some quotations to the school authorities about the rates and schedule for stitching the uniforms of the employees of the school; does not indicate that the uniforms of the employees of the school were stitched by the plaintiff. There is nothing on record which may indicate that the school authorities gave any order to the plaintiff to stitch the uniforms of the school employees.

49. In the agreement entered into between the parties, only this is mentioned that well designed and stitched uniforms according to the size and measurements of each student shall be supplied to the students of Naval Public School by the plaintiff. Neither in this agreement nor in any further agreement there is any stipulation to the effect that the contractor was directed to keep a stock of stitched uniforms in advance. If the contractor has done so on the request of the parents of the school children, as alleged, he has done so at his own peril. I may mention here that in the agreement it is mentioned that the uniforms should

be stitched according to the size and measurements of each individual student.

50. It was for the plaintiff to organize her business as to how and in what manner she was to maintain the supply of stitched uniform for the students, within time. If the plaintiff has chosen to maintain the stock of stitched uniforms for the students, it was her decision whether correct or incorrect. The consequences of such a decision are to be borne by the plaintiff and none else. There was no requirement from the side of the defendant that the plaintiff shall maintain any ready stock of supply of stitched uniforms of school children.

51. There is nothing on record which may reveal that the defendants were under any contractual obligation to clear or sell the stock of stitched uniforms kept or maintained by the plaintiff. It was purely on humanitarian and compassionate grounds that the Real Admiral had been trying to help the plaintiff (being the widow) in dispensing her stock of stitched uniforms either by keeping the same for sale in the INS Canteen or to the other contractor on a discount of 20% or so.

52. Last but not the least, there is no pleading in the plaint or otherwise that the defendants were under any contractual obligation to consume or sell the residue stock of the stitched uniforms left behind with the plaintiff.

53. I may mention here that it is admitted case of the parties that report was lodged by the plaintiff for misappropriation of her goods i.e. stitched uniforms etc. lying in the room in the school premises. The said report was investigated and ultimately the police reported that no theft was taken place. It was further reported by the police that no criminal case was required as no criminal offence has been committed. In view of my above discussions, I hold that the plaintiff has failed to prove that she is entitled for any amount in view of the allegations made in the plaint. Hence issue no.4 is decided accordingly in favour of the defendants and against the plaintiff.

54. There is no pleading in the plaint that there was any contractual obligation on the part of the defendant that the residue of the stock left behind with the plaintiff would be sold or consumed by the defendant. Further there is no documentary evidence to indicate that the defendant undertook to consume, sell or otherwise dispose the residue of the stitched cloth stock which would be left behind with the plaintiff. Hence the plaintiff is not entitled for any amount as damages or otherwise. Issue no.5 is decided accordingly in favour of the defendants and against the plaintiff.” (underlining added)

6. I do not find any illegality or perversity in the aforesaid findings and conclusions. The argument on behalf of the counsel for the appellant that there was a legitimate expectation, is an argument which lacks substance inasmuch as once the parties are bound by the contract, it is only the contractual terms which are binding the parties and there was no contractual term for the appellant / plaintiff to have kept any specific number of uniforms ready, and no such direction was ever issued by the respondent No.2. Therefore, whatever stocks of school uniforms remained were for the appellant / plaintiff to deal with as she desired, however, the respondent No.2 / defendant No.2 cannot be asked to pay for the price of the said uniforms.

7. I may note that the Trial Court also deleted the Union of India as a party to the case because the respondent No.2 was being run by a separate

legal entity being a society registered under the Societies Registration Act. The reasons for dismissal of the suit against the insurance company are contained in para 53 as quoted above that the police ultimately reported that no theft had taken place.

8. In view of the above, I do not find any merit in the appeal which is, accordingly, dismissed leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J.

NOVEMBER 25, 2011

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