

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 19th October, 2011
Judgment Delivered On: 17th November, 2011

+ RFA(OS) 113/2010 & CM No.7517/2011 (Cross
Objections)

GOVT OF NCT OF DELHI Appellant
Through: Mr.Aditya Madan, Advocate

versus

S.N.BANSAL (SINCE DECEASED)
THRU LRs Respondent
Through: Mr.D.K.Malhotra, Advocate and
Mr.Rajesh K.Malhotra, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE S.P. GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Briefly stated, the facts leading to the filing of the present appeal and the cross objections are that the respondent's suit claiming decree in sum of ₹25,81,635/- has been decreed with interest @ 9% per annum from the date of decree till realization. The claim was based upon three invoices Ex.P-1, Ex.P-2 and Ex.P-3 dated 27.04.1999, 29.04.1999 and 02.05.1999 in the sum of ₹10,66,790, ₹8,27,762.25 and ₹2,40,027.75 and pre-suit interest in sum of

₹4,48,056/-. The appellant challenges the decree and the respondent, by way of cross objections, seeks rate of interest to be enhanced from 9% per annum to 18% per annum and suffice would it be for us to note that when appeal was argued, learned counsel for the respondent stated that the cross objection may be disposed of as not pressed.

2. The facts leading to the filing of the suit as claimed by the respondent are that the respondent is the sole proprietor of the concern Bansal General Stores and was engaged in the business of supplying tin plates and tree guards etc. The appellant had placed purchase order Ex.D-1 dated 31.03.1999 for supply of 4000 tree guards on the firm of the respondent. On 27.04.1999, 29.04.1999 and 02.05.1999 the respondent supplied 2000, 1550 and 450 tree guards to the appellant and raised the invoices Ex.P-1, Ex.P-2 and Ex.P-3 as per the price indicated in the purchase order. It was alleged that the tree guards supplied by the respondent conformed to the specifications prescribed in the purchase order dated 31.03.1999. Mr.Tilak Chand, Senior Forest Ranger, Office of Conservator of Forests, inspected the tree guards supplied by the respondent at the time when the same were delivered and made an endorsement on the reverse of the invoices Ex.P-1, Ex.P-2 and Ex.P-3 dated 27.04.1999, 29.04.1999 and 02.05.1999 that (Quote): *'tree guards have been received as per specification and good condition'*. Despite the repeated requests of the respondent to the officers of the appellant, the appellant did not make the payment for the tree guards supplied. Since the respondent was hard pressed for money and the appellant was not making payment to the respondent

and started raising frivolous issues, acting as per the advice of an officer of the appellant the respondent wrote letter dated 06.07.1999 to the Conservator of Forests stating therein that there have been minor shortcomings in the length of tree guards supplied by the respondent and that the respondent is willing to supply more tree guards in ratio of calculation of under specification on pro rate basis or the department should deduct the amount in ratio of deduction which is short/under specification from the payment to be made to the respondent. The letter dated 06.07.1999 written by the respondent to the Conservator of Forests was a desperate measure on the part of the respondent to get his payment released from the appellant and should not be construed as an admission on his part that the tree guards supplied by him did not conform to the prescribed specifications. When the appellant did not make payment of the tree guards supplied by the respondent after considerable time the respondent issued a legal notice dated 27.04.2000 to the appellant.

3. In the written statement filed by the appellant the placing of the purchase order Ex.D-1 and supply of goods and raising of invoices Ex.P-1, Ex.P-2 and Ex.P-3 dated 27.04.1999, 29.04.1999 and 02.05.1999 and the receipt of the tree guards mentioned under the said invoices were not denied. The defence taken by the appellant was that the tree guards supplied by the respondent did not conform to the specifications prescribed in the purchase order dated 31.03.1999 and were of sub-standard quality. In a nutshell, it was pleaded in the written statement that on 04.06.1999 the Purchase Committee of the appellant inspected the tree

guards supplied by the respondent and found that the said tree guards did not conform to the prescribed specifications and were of sub-standard quality as recorded in the inspection report Ex.DW-1/2 dated 04.06.1999 prepared by the Committee. Thereafter a Committee headed by B.S.Bhalla, Deputy Commissioner (North), was constituted by the Chief Secretary of Delhi Government to look into the matter, which Committee also inspected the tree guards supplied by the respondent and agreed with the findings of the Purchase Committee that the tree guards supplied by the respondent did not conform to the prescribed specifications and were of sub-standard quality as recorded in the report Ex.DW-4/Y dated 29.11.1999 prepared by the committee. On receipt of a complaint, the Central Bureau of Investigation had also conducted an inquiry into the matter and found that the tree guards supplied by the respondent did not conform to the prescribed specifications and were of sub-standard quality as recorded in the report Ex.DW-5/1 prepared by the CBI. Since the tree guards supplied by the respondent did not conform to the prescribed specifications and were of sub-standard quality it was alleged that the appellant was entitled not to make any payment for supply of the tree guards.

4. Following issues were settled:-

“1. Whether the suit does not disclose any cause of action? OPD

2. Whether the goods supplied by the plaintiff were not as per specification or were of sub-standard quality? If so, to what effect? OPD

3. Whether the plaintiff is entitled to the suit amount? OPP

4. Whether the plaintiff is entitled to interest thereon? If so, for what period and at what rate? OPD

5. Relief.”

5. During the pendency of the suit, the respondent left for his heavenly abode and his legal heirs were brought on record to prosecute the suit.

6. Arunesh Bansal, the son of the respondent, examined himself as PW-1. In his testimony, he proved the supply of 4000 tree guards, a fact which was even otherwise not in dispute and deposed that at no point of time till the suit was filed was it ever informed to the firm of the respondent or the respondent that the goods had been rejected. He deposed that the respondent was never associated with the alleged inspections claimed to have been carried out by the respondents as pleaded in the written statement.

7. On behalf of the appellant, Prabhat Tyagi, Deputy Conservator of Forests, Satvir Singh, Assistant Conservator of Forests, Tilak Chand, Assistant Conservator of Forests, M.S.Negi, Conservator of Forests, Alok Kumar, Inspector, CBI Anti Corruption Branch, were examined as DW-1, DW-2, DW-3, DW-4 and DW-5 respectively.

8. Prabhat Tyagi DW-1, Deputy Conservator of Forests, deposed that he was the Chairman of the Purchase Committee which had inspected the tree guards supplied by the respondent at Asola Bhatti Wildlife Sanctuary in the presence of the respondent on 04.06.1999. On 03.06.1999 Assistant

Conservator of Forests had dispatched a letter by post to the respondent informing him that the tree guards supplied by him would be inspected by the Purchase Committee on 04.06.1999 at 04.00 P.M. On conducting inspection of the tree guards supplied by the respondent, the Purchase Committee found that said tree guards did not conform to the prescribed specifications and were of sub-standard quality. On being questioned about the inspection of the tree guards supplied by the respondent conducted by the Purchase Committee the witness stated (Quote): *'A reasonable period of time is given in the notice, which depends in the facts of each case, so as to make it comfortably possible for the supplier to be present. During any such inspection where supplier is present efforts are made to prepare a document to show that inspection of the articles was carried out in the presence of the supplier....'*

Quest: Can you point out any document on the judicial file record to show that plaintiff Mr.Bansal was present at the time of the alleged inspection carried out on 04.06.1999?

Ans. The fact of presence of Mr.Bansal during this inspection dated 4.6.1999 has been recorded in the inspection note Ex DW1/1 but it does not bear his signatures or even his name. The persons from the side of supplier at the time of that inspection present were, Mr.Arunesh Bansal and his brother whose name I do not recollect now.....Inspection of the tree guards taken up on 4.6.1999 was inspection by picking up thirty to thirty five tree guards at random because if was supply of a very large number of tree guards around four thousand....There was no mark of the plaintiff on the tree

guards supplied in this case when it was observed so during inspection.'

9. Satvir Singh DW-2, Assistant Conservator of Forests, deposed in sync with Prabhat Tyagi DW-1. Additionally, he deposed that the tree guards in question were inspected by the Purchase Committee in the presence of the respondent. On 10.09.1999 as per the directions of Bhalla Committee he had inspected 10 out of 4000 tree guards supplied by the respondent and found that the said 10 tree guards did not conform to the prescribed specifications as recorded in the report Ex.DW-2/A prepared by him. On being questioned about the inspection of the tree guards conducted by him on 10.09.1999 he stated (Quote):- *'I do not remember whether I have given a notice regarding carrying out the inspection on 10.09.1999 under the directions of Bhalla Committee. I do not remember if the plaintiff was present at the time of inspection on 10.09.1999. It is correct that no notice for carrying out inspection on 10.09.1999 was given to the plaintiff. There was no identification marks on the tree guards supplied by the plaintiff.'*

10. Tilak Chand DW-3, Assistant Conservator of Forests, deposed that he had received the delivery of the tree guards supplied by the respondent. He deposed that the endorsements *'tree guards have been received as per specification and good condition'* were made by him on the invoices Ex.P1, Ex.P2 and Ex.P3 on the basis of specifications contained in the said invoices. On being questioned about 4000 tree guards supplied by the respondent, he stated

(Quote):- *'It is correct that the 4,000 tree guards, which was supplied by the plaintiff were received by me. As per the directions of the department, I also used to receive the material supplied by other persons.'*

11. M.S.Negi DW-4, Conservator of Forests, deposed that he was a member of the Bhalla Committee which had inspected the tree guards supplied by the respondent on 13.09.1999. On inspection of the tree guards, the Committee had found that the said tree guards did not conform to the prescribed specifications and were of sub-standard quality. On being questioned about the inspection of the tree guards conducted by Bhalla committee he stated (Quote): *'On 13.9.1999 I along with other members visited and carried out general inspection of the tree guards but we did not measure or carried out the detailed inspection as per specifications. I do not remember whether on the tree guards which we had inspected were bearing any mark of the plaintiff. I did not give any notice to the plaintiff which was carried out on 13.9.99 nor I do remember if any person/representative of the plaintiff was present at that time.'*

12. Alok Kumar DW-5, Inspector, CBI Anti Corruption Branch, deposed that he was the enquiry officer in the present case and that the respondent had colluded with some officials of the appellant and managed to supply tree guards which did not conform to the prescribed specifications to the respondent. The report Ex.DW-5/1 was prepared by R.P. Aggarwal, SP and that he can identify his signatures. On being questioned about the tree guards supplied by the respondent he stated (Quote):-

'Quest: The samples which were seized were of plaintiff, on what basis you state so?

Ans: It was identified by the concerned Range Officer Mr.Tilak Chand on the said date when the surprise check was conducted.'

13. Vide impugned judgment and decree dated 02.02.2011 the learned Single Judge has decreed the suit in sum of ₹25,81,635/-. In arriving at the decision, it has been held by the learned Single Judge that:- (i) the appellant has failed to establish that the tree guards supplied by the respondent did not conform to the prescribed specifications and were of sub-standard quality inasmuch as the appellant was not able to establish that the tree guards inspected by the Purchase and Bhalla Committees were the ones supplied by the respondent; and (ii) in view of provision of Section 42 of the Sale of Goods Act which prescribes that the buyer is deemed to have accepted the goods when, after the lapse of reasonable time, he retains the goods without intimating to the seller that he has rejected them and the fact that the appellant did not intimate to the respondent about the defects in the tree guards supplied at any time prior to the filing of the suit.

14. The core controversy involved in the present matter is that whether the appellant could successfully establish that the tree guards supplied by the respondent did not conform to the prescribed specifications and were of sub-standard quality and rejection thereof was communicated to the respondent within a reasonable time. The onus was upon the appellant to prove that the tree guards supplied by the respondent did not

conform to the prescribed specifications and were of sub-standard quality.

15. The respondent had supplied 2000 tree guards on 27.04.1999, 1550 tree guards on 29.04.1999 and 450 tree guards on 02.05.1999. The delivery of the aforesaid tree guards was accepted by Tilak Chand DW-3, who while receiving the said tree guards endorsed on the invoices that the said tree guards were as per specifications and in good condition. Nothing happened till 03.06.1999, on which date the office of the appellant has claimed to have dispatched a letter by post to the respondent informing him that the Purchase Committee would conduct an inspection of the tree guards supplied by him on the next day i.e. 04.06.1999 at about 04.00 P.M. This letter was allegedly dispatched from the office of the appellant located in Kamla Nehru Ridge Road to the office of the respondent located in Main Bazaar Sabzi Mandi. The respondent has denied receiving the letter dated 03.06.1999. No proof of actual posting has been shown. Assuming the letter dated 03.06.1999 was dispatched by the office of the appellant, it is impossible for the same to have been received by the respondent well in time to be present at the inspection at Kamla Nehru Ridge Road at 04:00 PM the next day i.e. 04.06.1999.

16. Prabhat Tyagi DW-1 and Satvir Singh DW-2, the Chairman and Member of the Purchase Committee have asserted in their testimonies that the inspection dated 04.06.1999 was conducted by the Purchase Committee in the presence of the respondent. However the circumstances of the

case point to the contrary. Inspection report Ex.DW-1/2 of the Purchase Committee records that the respondent was present at the time when the inspection was conducted. Inspection report Ex.DW-1/2 is a typed document. Significantly, the portion relating to presence of the respondent at the time of the inspection is handwritten. Signatures of the respondent are absent. The aforesaid circumstance is a very strong pointer to the fact that the portion relating to the presence of the respondent at the time of the inspection was inserted in the inspection report Ex.DW-1/2 after the report was prepared. Inspection report Ex.DW-1/2 records that the inspection was conducted in the presence of the respondent; Prabhat Tyagi DW-1, deposed in his examination in chief that the inspection was conducted in the presence of the respondent whereas he stated in his cross-examination that the inspection was conducted in the presence of Arunesh Bansal, the son of the respondent and his brother and Satvir Singh DW-2, has deposed that the inspection was conducted in the presence of the respondent. All this goes to show that the inspection dated 04.06.1999 was conducted by the Purchase Committee at the back of the respondent and the officers have not only recorded incorrect facts but have made interpolations in the report. Respondent's signatures not being obtained on the report are fairly conclusive of his absence and not being associated.

17. Thereafter, on 10.09.1999 Satvir Singh DW-2, is stated to have inspected the tree guards supplied by the respondent. Satvir Singh DW-2, has admitted in his cross-examination that no notice was issued by him to the respondent in respect of the said inspection conducted. On 13.09.1999 the Bhalla

Committee is stated to have inspected the tree guards supplied by the respondent. M.S.Negi DW-4, a member of Bhalla committee, has admitted during cross examination that no notice was issued by him to the respondent in respect of the proposed inspection to be conducted.

18. As already noted hereinabove, while accepting delivery of the tree guards supplied by the respondent, Tilak Chand DW-3 had endorsed that the said tree guards were as per specification and in good condition. All the witnesses of the appellant have deposed that there were no identification marks on the tree guards supplied by the respondent. Such being the position, no reliance can be placed upon the reports Ex.DW-1/2, Ex.DW-2/A and Ex.DW-5/1 prepared by Purchase Committee, Satvir Singh, Bhalla Committee respectively at the back of the respondent. In these circumstances, whether the tree guards inspected by the said Committees/person were the ones supplied by the respondent itself is in doubt.

19. As regards the report Ex.DW-5/1 prepared by the CBI, suffice would it be to state that the CBI had seized the tree guards inspected by it at the pointing out of Tilak Chand DW-3. Tilak Chand DW-3, is the same officer who endorsed at the first instance that the tree guards supplied by the respondent are as per specifications and in good condition. Whether the tree guards inspected by the CBI were the ones supplied by the respondent is again a big question mark.

20. In view of the aforesaid, the learned Single Judge has rightly held that the appellant has failed to establish that the tree guards supplied by the respondent did not conform to the

prescribed specifications and were of sub-standard quality. Further, the learned Single Judge has rightly opined that there is no evidence that within a reasonable time of goods being delivered, rejection thereof was conveyed to the respondent and thus the goods would be deemed to have been accepted as per Section 42 of the Sale of Goods Act.

21. Much reliance was placed by the counsel appearing for the appellant on the letter dated 06.07.1999 written by the respondent to the office of the appellant. It was contended by the counsel that the said letter should be construed as an admission on the part of the respondent that the tree guards supplied by him did not conform to the prescribed qualifications. This aspect of the matter has been considered by the learned Single Judge in the following terms:-

“39. Counsel for the plaintiff has heavily relied upon the letter dated 6.7.1999 addressed by the plaintiff to the defendant Ex.D-5 wherein the plaintiff had admitted that there are shortfalls in the materials supplied by him to the defendant. It is pointed by counsel for defendant that this is an admitted document; plaintiff has himself admitted that there were shortcomings in his material and that is why he had given an alternate option to the department either to supply further tree guards in lieu of the deficiency or the department may deduct the necessary amount from his dues; this admission of the plaintiff does not now entitle him to claim any amount from the defendant.

40. This document Ex.D-5 dated 6.7.1999 has been perused. It had been written two months four days after last supply had been made by the plaintiff to the defendant. Contention of the plaintiff is that in spite of repeated reminders the defendant was not paying his dues and at the request of an officer of the defendant the plaintiff had written this letter in order to get his

payment released. A perusal of the document shows that the plaintiff has stated that there is some minor shortages in the length of the tree guards which were supplied by the plaintiff to the defendant; such a mistake had never been committed earlier; the material was supplied in urgency of time period; the department has never given any hint of any such mistake; permission be granted to rectify the same by supply of more tree guards in the ratio of calculation under specification on pro-rata basis or the department should deduct the amount of money in ratio of calculation which is sought under specification.

41. This letter by no stretch of imagination can be said to be an admission by the plaintiff that the entire supply of goods which had been made by him to the department had fallen short of the specifications; it only speaks of some minor shortages in the length of the tree guards which could be rectified.

42. This letter has admittedly been received by the defendant and has been relied upon by the department as their most precious document. However, no reply has been given by the defendant to this letter. Further it is also not the case of the defendant that he had even orally informed the plaintiff that his material was defective; nor were the legitimate dues of the plaintiff released to him. In these circumstances, on 27.4.2000 the plaintiff was constrained to issue a legal notice. No reply was given to this notice either. The lackadaisical and negligent attitude of the department continued.”

22. The appellant was not releasing the payment of the respondent despite repeated requests from him. The respondent was hard pressed for money. His money was stuck with the appellant. He claims that an officer from the office of the appellant contacted him and advised him to write letter dated 06.07.1999 to the appellant if he wanted early release of his payment. When a person is hard pressed for money he sometimes settles for something lesser than what is due to

him in view of the urgency of the situation. When seen from this angle, the explanation furnished by the respondent for writing the letter dated 06.07.1999 inspires confidence. Be that as it may, in the absence of any evidence led by the appellant to establish that the tree guards supplied by the respondent did not conform to the prescribed specifications and were of sub-standard quality, we agree with the aforesaid reasoning of the learned Single Judge that the contents of the letter dated 06.07.1999 written by the respondent to the appellant cannot be construed as an admission on the part of the respondent that the tree guards supplied by him did not conform to the prescribed specifications.

23. In view of above discussion, no infirmity is found in the impugned judgment and decree dated 02.02.2011 passed by the learned Single Judge. Consequently, the impugned judgment and decree dated 02.02.2011 is upheld and the appeal is dismissed with costs. The cross objections are dismissed as not pressed.

(PRADEEP NANDRAJOG)
JUDGE

(S.P.GARG)
JUDGE

NOVEMBER 17, 2011
mm