

A-7

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

%

Date of Judgment: 25.01.2011

+ **RSA No.264/2007**

MOHD. SUALEHEEN Appellant
Through: Mr. H.K. Chaturvedi,
Advocate.

Versus

SATYAWATI CO-EDUCATIONAL COLLEGE (DAY) & ANR.
.....Respondent
Through: Ms. Priya Kumar, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1 This appeal has impugned the judgment and decree dated 16.08.2007 which had reversed the findings of the trial Judge dated 12.12.2006. Vide impugned judgment and decree dated 12.12.2006, the suit of the plaintiff seeking damages and compensation had been decreed in the sum of ₹76,911.18 along with interest @ 8% per annum as also costs. Vide the impugned judgment, the decree was modified and the suit of the plaintiff was decreed for a lesser amount i.e. the actual bill which had been raised by the plaintiff which was in the sum of ₹8,746.18 along with interest @ 8% per annum. This judgment is the subject matter of

the second appeal.

2 The appeal has been admitted and the following substantial questions of law have been formulated:-

“1. Whether the document Ex.PW-1/10 dated 17.6.1996 was a concluded contract between the parties? If so, its effect?”

2. Whether the finding in the impugned judgment dated 16.8.2007 qua the amounts which were not awarded to the appellant/plaintiff are perverse? If so, its effect?”

3 On behalf of the appellant, it has been urged that the finding in the impugned judgment is a perversity; attention has been drawn to Ex. PW-1/10 dated 17.06.1996. It is pointed out that this document clearly shows that a concluded contract had been evidenced between the parties. The defendant had waived the condition of payment of earnest money and the other terms and conditions of the tender also stood waived in view of the fact that it was in an emergent situation that the plaintiff had been asked to complete the remaining work which had remained unconcluded by Mr. Rajender Singh. It was in this scenario that the award of work had been granted to the plaintiff in terms of the communication dated 17.06.1996. Attention has also been drawn to Ex. PW-1/11. Counsel for the appellant has placed reliance upon a judgment of High Court of Kerala reported in *AIR 1987 KERALA 56* to substantiate his submission that where the defendant's tender had been accepted by the plaintiff without defendant's/tenderer's making the security deposit, nevertheless it was held to be a concluded contract between the parties; the condition of deposit of the security amount had stood waived.

4 Arguments have been countered. It is pointed out that this

judgment would not apply as this was a case where the condition of deposit of the security amount had been expressly waived by the defendant which is not so in the instant case. Attention has been drawn to the communication dated 25.06.1996 (Ex. PW-1/11) wherein a reminder had been given to the plaintiff to deposit the security amount. Attention has also been drawn to the bill raised by the plaintiff on 05.07.1996 which was in the sum of ₹8,746.18 which amount had been decreed in favour of the plaintiff in the impugned judgment. It is pointed out that the subsequent bill raised by the plaintiff on 10.07.1996 (Ex. PW-1/1) was highly inflated and exorbitant i.e. in the sum of ₹57,780/- and was clearly an afterthought and that is why it did not find mention when the first bill was raised by the plaintiff on 05.07.1996; nothing prevented the plaintiff from raising this amount also on the said date. Attention has also been drawn to the communication dated 27.06.1996 which had been sent by the plaintiff to the defendant.

5 Arguments have been addressed today on the substantial question of law framed.. Documents placed on record are admitted documents. Parties have agreed that since the point involved is short, the matter be disposed of today itself.

6 This Court is sitting in the second appeal. It can interfere in the findings of fact only if the same are perverse and on no other count. The impugned judgment had scrutinized the document dated 17.06.1996 as also the subsequent document dated 25.06.1996. The communication dated 17.06.1996 (Ex. PW-1/10) reads as under:-

"Ref. No. SCCI/...../45/96-97

Dt. 17.6.96

*Mr. Mohd. Sualeheen
1011, Haveli Bakhtawar Khan,
Gali Madarsa Husain Buksh,
Bazar Matia Mahal,
Jama Masjid,
Delhi - 110006*

Dear Mr. Mohd. Sualeheen,

This is in reference to the quotation submitted by you in regard to white washing and painting of the college building. I am happy to inform you that your quotations for the above work have been accepted and that you are awarded the work. You are requested to meet Mr. R. Peter, Administrative Officer to get the other necessary formalities completed.

With regards,

*Yours sincerely,
Sd/-
(Dr. K.P. Bhatt)
Principal"*

7 A perusal of this document shows that the quotations of the plaintiff had been accepted and the work had been awarded to him. It is also not in dispute that pursuant to this communication, the work had actually been started by the plaintiff and he completed three days' work i.e. w.e.f. 17.06.1996 to 20.06.1996 thereafter certain misgivings were noted in the work of the plaintiff. This is evident from the communication dated 25.06.1996 Ex. PW-1/11. This document reads as under:-

"Ref. No. SCCI/Admn./159/96-97

Dt. 25.6.1996

*Mr. Mohd. Sualeheen
1011, Haveli Bakhtawar Khan,
Gali Madarsa Husain Buksh,
Bazar Matia Mahal,
Jama Masjid,
Delhi - 110006*

Dear Mr. Mohd. Sualeheen,

This is in supersession to our letter No. Ref. No. SCCI/Admn./145/96-97 dt. 17.6.1996. You have failed to deposit the required security amount of Rs. 2000/- with the college and also did not agree to the terms and conditions put by the committee on 20.06.1996 in regard to applying more than one coat of

'Snowceam', in case the work is not found satisfactory. Moreover, during the discussion in the meeting on 20.06.1996 your behaviour was very uncalled for the subsequently you walked out from the meeting without any final decision.

Under the above circumstances, the letter under reference i.e. SCCI/Admn./145/96-97 dt. 17.6.96 is treated as withdrawn.

*Yours faithfully,
Sd/-
(Dr. K.P. Bhatt)
Principal"*

This document shows that the defendant was dissatisfied on three counts i.e. (i) security amount of ₹2,000 had not been deposited, (ii) regard to applying another coat of 'Snowceam and (iii) behavior of the plaintiff in the meeting of 20.06.1996 was uncalled for.

8 The reply of the plaintiff to this communication dated 25.06.1996 was dated 27.06.1996. This document inter-alia reads as follows:-

Ref. No.

Date 27.06.1996

The Principal

Satyawati Co-educational College

Ashok Vihar, Phase-III,

Delhi-110052

SUB:- WHITE WASHING, SNOWCEM, PAINTING AND DRY DISTEMPER ETC. IN COLLEGE PREMISES.

Sir,

As you know that the above work was awarded to me through your letter No. SCC/ADMN/145/96-97 dated 17.06.1996.

It is requested that a copy of the terms and conditions of the above tender may please be issued to me. I am ready to pay the charges if any for the same.

Thanking you and assuring you of our best cooperation at all times. This may be treated as most urgent

Yours faithfully,

(Mohd. Sualebeen)

9 The admitted position which is borne out from these aforementioned three documents is that the defendant had awarded the work to the plaintiff after accepting his quotations. Work had commenced. The plaintiff had painted the walls of the college but his work was found dissatisfactory. There was a meeting on 20.06.1996 wherein this was noted; the behavior of the plaintiff was uncalled for. On 25.06.2996, the work awarded to the plaintiff vide letter dated 17.06.1996 was withdrawn. This correspondence shows but one thing i.e. a concluded contract had come into existence between the parties. The impugned judgment holding that this was a conditional acceptance only is a perversity and is clearly contrary to the tenor of the documents aforementioned.

10 It is an admitted position that this work had initially been awarded to one Mr. Rajender Singh; the defendant had conceded that 75% of this work was completed by Mr. Rajender Singh but thereafter, he left midway. There was an emergency. The plaintiff although not the lowest bidder but being next in line after Mr. Rajender Singh was on urgency measures awarded this work. This is also evident from Ex. PW-1/10. It is also come on record that the plaintiff had in fact done work between 17.06.1996 to 20.06.1996. The work already having been awarded to the plaintiff on which he had commenced action i.e. put in his labour; bought the material, the necessary conclusion is that the contract had come into existence. PW-1/11 also makes a categorical assertion that the work awarded to the plaintiff vide letter dated 17.06.1996 is withdrawn. In these circumstances, condition of deposit of the security amount necessarily stood waived. The judgment of M/s Bismi Abdullah & sons (Supra) would squarely apply.

11 A concluded contract having followed, the plaintiff was entitled to damages for breach of contract. This is envisaged under Section 73 of the Indian Contract Act. The bill raised by the plaintiff of the actual work done is dated 05.07.1996. The bill for the material which he had procured and kept has been proved as Ex. PW-1/1. It is also relevant to note that evidence had been led by the plaintiff alone; the defendant did not lead any evidence; inspite of opportunity, he was not able to produce any witness; his evidence had stood closed.

12 The finding in the impugned judgment that there was no contract between the parties; document Ex. PW-1/10 only being a conditional acceptance is a perverse finding and call for an interference. The amounts were not awarded as a corollary to the finding that there was no concluded contract. These findings are set aside. The judgment of the trial Court dated 12.12.2006 is upheld. The suit of the plaintiff is decreed in the sum of ₹76,911.18 along with interest @ 8% per annum and costs.

Appeal is allowed.

INDERMEET KAUR, J.

JANUARY 25, 2011

a