

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

+ **RFA No.556/2003**

% **2nd January, 2012**

M/S. GROUP INTERIORS Appellant

Through: Mr. Ajay Kumar Jha with
Mr. Debojyoti Bhattacharya &
Ms. Sarabjot Walia, Advs.

versus

SUBHASH CHACHRA Respondent

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 matter is on the Regular Board of this Court since 5.12.2011. It is effective item no.7 as per today's Regular Board. No one appears for the respondent although it is 3.00 P.M. I have therefore heard counsel for the appellant, and after perusing the record am proceeding to dispose of the appeal.

2. The challenge by means of this Regular First Appeal is to the impugned judgment of the Trial Court dated 19.2.2002. By the

impugned judgment, the suit filed by the appellant/plaintiff for recovery of ₹3,21,132/- on account of various furniture items supplied to the respondent/defendant was dismissed and the counter claim of the respondent/defendant was decreed for ₹25,000/- with proportionate costs and interest at 12% per annum.

3. The facts of the case are that the appellant/plaintiff is the sole proprietorship concern of Smt. Pallavi Anand, wife of Sh.Vijay Anand. The appellant/plaintiff, as the name suggests, was in the business of work of interiors of buildings, including supply of furniture for the said purpose. The appellant/plaintiff pleaded that she wrote a letter dated 14.9.1984 giving the estimated costs for manufacture and supply of the desired furniture items to the respondent/defendant. It was pleaded that the same was approved by the respondent/defendant with slight variations in the items of the furniture to be supplied. The respondent/defendant is also stated to have given a cheque for ₹25,000/- towards advance payment for the manufacture and supply of the furniture items. It was further pleaded that the respondent/defendant vide its letter dated 10.10.1984 confirmed the estimated costs of the furniture items to be supplied with slight variations in the items of the furniture. The appellant/plaintiff further pleaded that the necessary furniture items were

manufactured and supplied to the respondent/defendant between 18.12.1984 and 11.9.1985, and due receipts were obtained for the furniture items supplied. It was pleaded that the respondent/defendant had assured that the payment will be made in one lump-sum after all the furniture items were supplied. After the supply of all the items of furniture, the appellant/plaintiff submitted its final bill dated 20.9.1985 for the amount of ₹2,98,403/- after adjusting ₹25,000/- received as advance amount, which was not paid. The appellant/plaintiff therefore filed the subject suit seeking ₹2,73,403/- along with claim of interest at 18% per annum at ₹47,729.40 totaling to ₹3,21,132/-.

4. The respondent/defendant contested the suit by claiming that he never ordered the furniture items and nor was the furniture mentioned ever supplied. The case of the respondent/defendant was that the appellant/plaintiff did not have the requisite knowledge and therefore the respondent/defendant asked for refund of the advance paid of ₹25,000/-, and with respect to which a counter claim was filed. The respondent/defendant however did not dispute that he received an estimate from the appellant/plaintiff concern known as the Group Interiors and he had in fact issued a cheque for ₹25,000/- on 28.9.1984. It was further pleaded that many items were supplied which the

respondent/defendant did not approve and which is mentioned in the letter dated 10.10.1984. The letter dated 10.10.1984 is admitted to have been written by the respondent/defendant. It was pleaded that Sh.Vijay Anand, husband of the sole proprietor of the appellant/plaintiff was required to discuss the matter personally with the respondent/defendant. It was further the case of the respondent/defendant that he never signed any receipts for the furniture items delivered which were alleged to be fabricated.

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

- “1. Whether there is privity of contract between the parties?
2. Whether the defendant placed an order with the plaintiff for making and supplying of the furniture for his residence at B-5, Safdarjung Enclave, New Delhi?
3. Whether letter dt. 10.10.1984 of the defendant enclosing approved copy of the estimate dt. 14.9.1984 does not constitute a contract between the plaintiff and defendant?
4. Whether the plaintiff has supplied the contracted items of furniture to the defendant as per the approved copy of the estimate dated 14.9.1984, if so, what is the value thereof?
5. Whether the defendant is entitled to claim Rs.25,000/- from the plaintiff as alleged?

6. To what amount the plaintiff is entitled to in the suit?

7. Relief.”

6. Before the Trial Court, the appellant/plaintiff proved a total of 40 documents which were exhibited as Ex.PW1/1 to Ex.PW1/40, and which documents pertained to the aspect of supply/delivery of goods through challans, serving of the bills including the final bill, cartage bills and serving of the legal notice and the failure of the respondent/defendant to pay the amount. Ex.PW1/1 is an authorization letter signed by Smt. Pallavi Anand in favour of her husband, Sh. Vijay Anand, Ex.PW1/2 is the letter dated 10.10.1984 sent by the respondent/defendant, Ex.PW1/3 to Ex.PW1/20 are the challans against which the items were delivered to the respondent/defendant and Ex.PW1/21 to Ex.PW1/40 are the cash vouchers with the cartage vouchers showing the payment made to the transporter for the delivery of the furniture items.

7. So far as the issue no.1 of privity of contract is concerned, the Trial Court has found that Sh. Vijay Anand, husband of Smt. Pallavi Anand, the sole proprietress, was not authorized to deal with the respondent/defendant and therefore there is no privity of contract between the parties. I find that the Trial Court has wholly misdirected itself in

deciding this issue against the appellant/plaintiff, inasmuch as, once the respondent/defendant admits that he has written the letter dated 10.10.1984, Ex.PW1/2, and also had forwarded a sum of ₹25,000/- as advance, it cannot be argued on behalf of the respondent/defendant that there was no privity of contract to the appellant/plaintiff. In fact the respondent/defendant had himself pleaded that in his letter dated 10.10.1984, Sh. Vijay Anand had to finalise the items, i.e. Sh. Vijay Anand was representing the plaintiff and with whom the respondent/defendant was dealing with. Further, once it is held, and which is an aspect which I will deal with hereinafter, that the respondent/defendant had in fact received the furniture items, then, even if there is no contract with the appellant/plaintiff, the respondent/defendant having received the furniture items, in terms of the Section 70 of the Contract Act, 1872, the respondent/defendant is bound to make payment with respect to goods received by him.

8. With respect to the issue no. 2 of whether an order was placed by the respondent/defendant upon the appellant/plaintiff, the Trial Court has held that the letter dated 10.10.1984, Ex.PW1/2 showed that no order was ever materialized. In my opinion, once again the Trial Court has arrived at a totally illegal and perverse finding. That there was a

concluded contract between the parties becomes clear once we refer to the letter dated 14.9.1984 which was sent by the appellant/plaintiff to the respondent/defendant and the reply thereto dated 10.10.1994, Ex.PW1/2. I am reproducing below the two letters dated 14.9.1984 and 10.10.1984 Ex.PW1/2 without reproducing the unnecessary long list of furniture items which are mentioned in the detailed estimate dated 14.9.1984 (attached with the letter dated 10.10.1984) inasmuch as it is 3 pages document comprising of 57 items of different furniture pieces.

Though the letter dated 14.9.1984 has not been exhibited by the Trial Court since it is an admitted document, I am referring to the same, more so because the letter of the respondent/defendant dated 10.10.1984, Ex.PW1/2 annexes therewith the estimate dated 14.9.1984 comprising 57 items of furniture. The letters dated 14.9.1984 and 10.10.1984 read as under:-

“14th September, 84.

Dear Mr.Subhash Chachra,

Reference to various meetings undersigned had with you and your approval of designs and lay-out enclosed please find our estimate for supply of furniture for your residence. Rates quoted are exclusive of Sales tax and are up to white. Please note that we will require 40% advance, 55% during progress of work and balance on completion.

Thanking you with kind regards,

(VIJAY ANAND)

Sh.Subhash Chachra,
Satyam Cinema,
West Patel Nagar,
NEW DELHI.

&

“Dear Mr. Vijay Anand

I enclose herewith a copy of your estimate, and would like you to note the following:

1. Items cross-marked are not required.
2. Certain items’ quantity is reduced, as marked in the quantity column.
3. Item Nos. 11, 12 and 13 under the sub-heading T.V.ROOM, shall be discussed with you personally.

Thanking you,

Yours truly,

(SUBHASH
CHACHRA)

Mr. Vijay Anand
Group Interiors
D-70 Saket
New Delhi 110 017

Enc: a copy of your estimate.”

9. A reference to Ex.PW1/2 dated 10.10.1984 shows that only

the cross marked items are not required, i.e. only with respect to the cross
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marked items, there was no agreement. The cross marked items are just 6 in number out of the total of 57 items in the estimate dated 14.9.1984. Thus the very fact that rest of the items are not cross marked shows a concluded contract with respect to the other 51 items. With respect to certain items, the quantity is reduced and which items are 5 in numbers. Therefore, the quantity supplied will stand reduced by 5 numbers of items being 4 items at page 2 of the estimate and 1 item at page 3 of the estimate. I may at this stage itself mention that though there are 57 serial numbers of furniture items to be supplied, under each individual serial number in many furniture items there is more than one item of furniture, i.e. under many serial number more than one similar items of furniture were to be supplied. Therefore, there is a concluded contract with respect to the items which are not cross marked and the items of whose quantity is not reduced and qua the quantity of items left after the reduced quantities. It is only with respect to item numbers at serial numbers 11, 12 and 13 that it was said/written that the matter would be discussed personally, and therefore only for these item numbers 11, 12 and 13 which are a Wall Unit, a Carved Shelf and a Wall Mirror with Carving and Antiquing, it cannot be said that there is a contract. Of course whatever items are found to have been, in fact, received by the

respondent/defendant, amounts would be payable for such items also. In law it is not necessary that there has to be a proper typed out contract written on a stamp paper inasmuch as, as per the provisions of Sections 7, 8 and 9 of the Contract Act, 1872, a contract can be wholly oral or wholly in writing, or partly oral or partly in writing, or partly express or partly implied, or partly or wholly even by conduct of the parties. A reference to the aforesaid two letters dated 14.9.1984 and the letter dated 10.10.1984, Ex.PW1/2, clearly shows that there was, except for certain minor items, a concluded contract which was entered into with respect to all other items. The Trial Court was therefore wholly unjustified in arriving at a finding that there was no concluded contract. Once again, at this stage, and at the cost of repetition, I may state that even assuming that there is no confirmed contract, Section 70 of the Contract Act, 1872 will come into play once it is found that the items of furniture were in fact supplied to the respondent/defendant and the same have been retained by him and not paid for.

10. The main issue really is as to whether the items of furniture were in fact supplied to the respondent/defendant. In this regard, the relevant issue which was framed was issue no. 4. The Trial Court has

dealt with this issue in paras 16 & 17 of the impugned judgment and which paras read as under:-

“ I S S U E N O. 4

16. Onus to prove this issue was also upon the plaintiff in discharge of which the plaintiff has produced and examined PW-1 Shri Vijay Anand. PW-1 Shri Vijay Anand has no doubt deposited material facts consistent to the claim of the plaintiff and in addition to that he has proved the documents Ex.PW1/1 to Ex.PW1/40, out of which the document Ex.PW1/3 to Ex.PW1/20 are the challans through which the goods were allegedly supplied by the plaintiff to the defendant. I have gone through all the challans Ex.PW1/3 to Ex.PW1/20 and find that none of the challans was issued by the plaintiff. All these challans were issued by Shri Vijay and Associates Pvt. Ltd. with whom no contract has been pleaded and proved by the plaintiff by any document in that regard. Since these challans have not been issued by the plaintiff, I find that the plaintiff bitterly failed to prove the supply of those goods to the defendant and the alleged supply made by Shri Vijay Anand Association Pvt. Ltd. was not in accordance with the alleged contract itself. At the same time the challans proved by the plaintiff do not prove the signatures of the defendant for the receipt of any of the goods allegedly supplied. Therefore in the absence of proving the signatures of the defendant on any of the challans Ex.PW1/3 to Ex.PW1/20, I find that the plaintiff bitterly failed to prove the supply of nay goods mentioned in the challan Ex.PW1/3 to Ex.PW1/20 to the defendant on any date as stated in those challans. Therefore, I find despite proving those documents Ex.PW1/3 to Ex.PW1/20 the plaintiff bitterly failed to prove the supply of nay item to the defendant as no document was bearing the signatures of the defendant or of any person duly authorized by the defendant.

17. The plaintiff has also proved the documents Ex.PW1/21 to Ex.PW1/40 which are the vouchers through which the cartages have been allegedly paid for supply of the goods. In view of the statement made by PW-1 on cross-examination no cartages had been paid by the plaintiff and at the same time those vouchers have not been addressed to the defendant for the supply of the goods at the address of the defendant. Therefore even by proving those vouchers, I find that the plaintiff bitterly failed to corroborate the supply of the goods at the residence of the defendant, therefore, by these documents Ex.PW1/3 to Ex.PW1/40, I find plaintiff bitterly failed to supply any goods to the defendant at his residence. So this issue stands decided in favour of the defendant and against the plaintiff.”

11. In my opinion, once again the Trial Court has committed a grave illegality in arriving at a finding that the items of furniture were not supplied. The Trial Court has arrived at the following conclusions in the aforesaid paras 16 and 17 of the impugned judgment:-

- i) That the challans, Ex. PW1/3 to PW1/20 are not issued by the appellant/plaintiff;
- ii) There are no signatures of the respondent/defendant for receipt of the goods on the challans and;
- iii) No payment has been made on the cartage vouchers which were exhibited as Ex.PW1/21 to PW1/40.

12. Let us examine each of the conclusions of the Trial Court to decide the correctness of the same. The first aspect is whether the challans, Ex.PW1/3 to Ex.PW1/20 are not issued by the appellant/plaintiff, and if so, its effect. Of course, the challans are no doubt issued by M/s. Vijay Anand Associates, however, in law, it makes no difference as to who has sent the goods inasmuch as consideration to a contract need not flow only between the parties to a contract, i.e. the respondent/defendant becomes liable to pay for goods once he received the goods as ordered by him and as received by him irrespective of from whom he has received them. Also, the defence of the respondent/defendant is like making a mountain out of a molehill inasmuch as surely if a husband and wife, i.e. Smt. Pallavi Anand and Sh. Vijay Anand are carrying on business under different names, then, from where the furniture items are supplied to the respondent/defendant, i.e. from M/s. Group Interiors or from M/s. Vijay Anand Pvt. Associates who have issued the challans, is purely a matter of heading only and the same has nothing to do with the substance of the claim. I therefore hold that merely because the challans by which the furniture items were supplied are on the printed challans of M/s. Vijay Anand Associates and not of

M/s. Group Interiors, the same cannot make any difference once the respondent/defendant is found to have received the furniture items.

13. The next aspect is as to whether the items of furniture are in fact supplied to the respondent/defendant and received by him. When we look at the challans, Ex.PW1/3 to PW1/20, the same appear to be quite clearly genuine even on a single glance as they are the typical challans of different dates, are in different handwritings of different persons, of different items, and, the physical condition of the challans also quite clearly reflects on their genuineness. Also the genuineness of the challans becomes clear from different endorsements which are made on the different challans, i.e. whereas in some challans it is mentioned that a particular number of pieces/articles are received, i.e. in the challan dated 14.6.1981, Ex.PW1/16, the endorsement is of having received two chairs and one small sofa and having returned one complete double hanging almirah, in contract in Ex.PW1/17, it is written as “received as per above” and as differentiated from other challans in which it was written that specific number of items have been received. Further, the challans contain the complete and detailed address of the defendant being B5/11, Safdarjung Enclave, New Delhi. The challans seem to have been received mostly by one person whose surname is Chachra, as the signatures on the

receipts show, and obviously, such person Mr. Chachra would either be the parent of the defendant or his wife or some other family member. Some of the challans are also received by some other persons, however, there is nothing unusual in the same, because when items are received in a house many a times even servants or other employees of the house-owner to whom the furniture items are delivered signs and receives the furniture items. I would go to the extent of saying that almost in substantial number of cases, receipts are actually not only by a person in whose name the challans/bills are because normally such person who is a working person is not found at home on those occasions when the furniture items or other items are in fact supplied. It will be thus most impractical to require that the receipts can only be by the person who has bought the furniture items.

14. The Trial Court has then held that the cartages vouchers cannot be believed because these cartage vouchers do not contain the complete address of the respondent/defendant. Let us see these cartages vouchers. The first important point to note is that with respect to each cartage document, there is a corresponding voucher with respect to the cartage batch of the transporter. The cartage vouchers are cartage vouchers showing supply of furniture items by the owner of the transport

(and which in all probability either is a tempo or cycle rickshaw or some other small mode of transport), to different clients and one of which is also the respondent/defendant. This position is found in most of the cartage documents where the transportation is shown either to the residence of the respondent/defendant, or to the office of the Magazine “India Today” or to some person in Malcha Marg or to Nehru Place or so on. Even a single look at these cartage documents and the vouchers shows quite clear authenticity of the said documents. Such cartage documents are invariably small cartages amounting to ₹50/- or ₹60/- or ₹25/- or ₹35/- or ₹165/- or ₹70/- or so on and so on. I would go to the extent of saying that the documents in these cases being the cartage challans and the corresponding vouchers with respect to the same speak for themselves with regard to their authenticity.

15. In my opinion, adverse inference is also liable to be drawn against the respondent/defendant inasmuch as the appellant/plaintiff had sent a legal notice dated 8.5.1986 to the respondent/defendant, an aspect which is mentioned in para 12 of the plaint and in reply to para 12 of the plaint, the respondent/defendant in the written statement does not dispute having received this legal notice but has not replied to the same. The stand of the respondent/defendant that he did not send any reply because

a common friend was showed the notice who called up Mr. Vijay Anand and who informed that the notice was only sent so that the respondent/defendant would not ask for the return of ₹25,000/- given as advance money, was/is obviously a false stand because the name of the so-called common friend is not mentioned, and it goes against normal human conduct that there is no reply sent to a legal notice which claims amount running into lakhs of rupees.

16. In my opinion, I need not labour any further into this aspect of the furniture items not having been supplied to the respondent/defendant inasmuch as whereas the appellant/plaintiff led evidence and proved her case, admittedly, no evidence at all was led on behalf of the respondent/defendant. I am therefore surprised that in the absence of any affirmative evidence on behalf of the respondent/defendant, how could the Trial Court have dismissed the suit of the appellant/plaintiff, more so in the presence of all the original documents be the contract letters or the delivery challans/bills or the cartage documents. Obviously, a person who does not have the courage to lead evidence and stand the test of cross-examination has necessarily to be disbelieved in the face of overwhelming documentary evidence led on behalf of the appellant/plaintiff.

17. A civil case is decided on balance of probabilities. The balance of probabilities in the present case shows that there was in fact a contract under which furniture items were supplied to the respondent/defendant, and, it makes no difference whether the furniture items were supplied by M/s. Group Interiors or M/s. Vijay Anand Associates. The fact of the matter is that the respondent/defendant has received these furniture items, and as per Section 70 of the Contract Act, 1872 every person, in law, is bound to pay for the goods received by him, whether or not they are pursuant to a contract. Finally, it is the aspect that the respondent/defendant did not lead any affirmative evidence and did not have the courage to stand the test of cross-examination. The Trial Court has thus clearly committed a gross illegality and perversity in dismissing the suit for recovery of monies filed by the appellant/plaintiff and decreeing the counter claim for refund of the advance amount of ₹25,000/-. Ordinarily, I would have sent a copy of this judgment to the inspecting Judge or the concerned ADJ who had decided this case, but I cannot take the matter any further inasmuch as the said ADJ has since retired.

18. In view of the above, the appeal is accepted. The suit of the appellant/plaintiff is decreed for an amount of ₹3,21,132.40 along with

pendente lite and future interest till payment at 12% per annum simple. The appellant/plaintiff is also awarded costs. The counter claim of the respondent/defendant shall stand dismissed. Decree sheet be prepared. Trial Court record be sent back. The amount deposited by the appellant in this Court, along with accrued interest be released back to the appellant by the Registry.

VALMIKI J. MEHTA, J

JANUARY 02, 2012
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