

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

+ **RFA No.609/2003**

% **5th January, 2012**

SH. RATI RAM Appellant

Through: Mr. Rajiv Bahl, Adv.

VERSUS

M/S. D.C.M. SHRORAM CONSOLIDATD LTD. 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. The challenge by means of this Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment of the Trial Court dated 30.9.2002. By the impugned judgment, the Trial Court decreed the suit filed by the respondent/plaintiff for recovery of advance tailoring charges which were paid to the appellant/defendant. By the impugned judgment the counter claim which was filed by the appellant/defendant was also dismissed.

2. The facts of the case are that parties entered into an agreement dated 30.7.1976 whereby the appellant/defendant was appointed as a tailoring contractor for executing the work as stated in the schedule annexed with the agreement. The original agreement was for one year from 2.8.1976 to 31.7.1977, and whereafter, it was firstly extended for a period of 6 months and thereafter there were two extensions of 2 months each. The last extension of one month expired on 30.4.1998. The terms and conditions for all the agreements remained the same as were found in the first agreement dated 30.7.1976. A total sum of Rs.14,70,459.08 was paid to the appellant/defendant by the respondent/plaintiff, and for which period, the respondent/defendant had submitted bills worth Rs.13,20,533/-. After giving credit of this amount as also for another bill for Rs.18,662/-, a sum of Rs.1,31,263.98 was found to be paid in excess to the appellant/defendant, and for recovery of which the subject suit was filed after a legal notice dated 7.8.1978 was served upon the appellant/defendant, but which failed to yield any result. The defence of the appellant/defendant in the Trial Court was that with respect to item nos. 22, 23, 40 and 41 which are found in the schedule of rates annexed with the agreement, Ex.P14, payments which were made by the respondent/defendant were made only length-wise whereas payments were to be made both length-

wise and breadth-wise and for the entire cloth.

3. The relevant issue in this regard was issue no. 2 which was framed by the Trial Court and which was whether the bills which were prepared for the work done had been prepared in accordance with the agreement between the parties or not. While dealing with this issue, the Trial Court has noted that during the entire period of performance of the different contracts; which originally was for a period of one year, and 4 extensions thereafter for periods varying from 6 months to 2 months; payments which were made for the work done for the disputed items were only as per the length of the cloth. Accordingly, the Trial Court held that once for the entire period of the contract, parties understood the schedule of rates annexed to a contract in a particular manner, payments were received in the manner understood by the parties, i.e. only length-wise, therefore, it was not permissible for the appellant/defendant to claim that payments should also be made breadth-wise for the cloth as also other charges. The Trial Court has also noted that during the entire period of performance of the contract, the appellant/defendant raised bills on the basis of the length of the cloth only and therefore when the recovery of excess amount paid was asked, it was not permissible for the appellant/defendant to claim that he was an illiterate

person and he did not know how the bills were issued.

4. I may state that the Supreme Court in the case of ***Godhra Electricity Company Ltd. & Anr. vs. State of Gujarat & Anr.,(1975) 1 SCC 199*** has held that the meaning of the contract is best understood by the parties who have entered into the contract, and have acted as per what they think is the interpretation of the contract. The Supreme Court has observed that even if the acting upon by the parties on such written contract may be possibly against wording of the contract, however, that would not mean that the contract can be interpreted differently later, inasmuch as, when the parties act as per particular interpretation of the contract, and which may not be the only interpretation, it can also be interpreted as if the parties have suo moto amended remade the contract. The relevant observations of the Supreme Court are contained in para 11 of the judgment in the case of ***Godhra Electricity Company Ltd. (supra)*** and the same read as under:-

“In the process of interpretation of the terms of a contract, the Court can frequently get great assistance from the interpreting statements made by the parties themselves or from their conduct in rendering or in receiving performances under it. Parties can, by mutual agreement, make their own contracts; they can also by mutual agreement remake them. The process of practical interpretation and application, however, is not regarded by the parties as a remaking of the contract; nor do the courts

so regard it. Instead, it is merely a further expression by the parties of the meaning that they give and have given to the terms of their contract previously made. There is no good reason why the courts should not give great weight to these further expressions by the parties, in view of the fact that they still have the same freedom of contract that they had originally. The American Courts receive subsequent actings as admissible guides in interpretation. It is true that one party cannot build up his case by making an interpretation in his own favour. It is the concurrence therein that such a party can use against the other party. This concurrence may be evidence by the other party's express assent thereto, by his acting in accordance with it, by his receipt without objection of performances that indicate it, or by saying nothing when he knows that the first party is acting on reliance upon the interpretation."

5. Some of the relevant observations of the Trial Court for decreeing the suit and dismissing the counter claim are as under:-

"Defendant had time and again sought extension of the period of the contract. In his cross examination his stand is that he was forced to sign these request letters for the extension on the assurance that he would be paid all outstanding dues as per work done. These request letters were consider by the company and after considering the same, letters were issued to defendant whereby his request for extension was acceded. The extension were sought by defendant of his own. No protest was lodged during the currency of the Agreement and its respective extensions. The question of lodging verbal and written complaints which were alleged to have been destroyed by plaintiff, are in contradiction with stand of defendant in his written statement and counter claim where had had stated that he came to know about these discrepancies only after going through the documents filed on record by plaintiff in the

suit. In his cross examination dated 25.5.1999 his version is that within 2-3 months of the date of contract he came to know that he was losing in business with plaintiff company. He had further stated that he was told by some employee of plaintiff company that he was being paid only 1/3rd of the payment due to him for doing dressing work of towels. Now he changes his stand that he had never given any complaint regarding non-payment of the full dues of the dressing work as he had apprehended that whatever was due would also not be paid. He refused to disclose the name of the employee of plaintiff who had informed that he was being paid less. Again his statement that it came to his knowledge within 2-3 months of entering into the contract that he was losing money but he did not raise the objection on the ground that his remaining dues would be held back by plaintiff company is contrary to his pleading in his written would be held back by plaintiff company is contrary to his pleading in his written statement and counter claim. He has mentioned the period of 2-3 months, if t his period is stretched to three months, let us see the amount due to him on 31st October, 1976. During this period defendant had taken ₹2.01,500/- from plaintiff as advance and he has submitted bills worth ₹1,74,819.32 so it was rather plaintiff company's money which was held by defendant, hence there was no force in his contention that he kept on working at loss to his fear that his money would be struck with plaintiff company.

Further the contention of defendant is that all the bills were prepared by the employees of plaintiff and he was only signing the said bills without even checking the same. He has further stated that the bills were signed under a hurry on the last date when the payment was to be made. In his cross examination dated 14.5.1999 he had admitted that he was maintaining the record of the work done by his workers. During the tenure of the Agreement and extension thereof number of bills were submitted and it

could not be said that all the bills were signed under a hurry, Ex.PW1/5 is the copy of the statement of account which shows that the dates for submission of the bills and in most cases the date of release of money as advance for wages are different. The Agreement Ex.PW1/3 also provide that it was the contractor who had to present his bills every fortnightly or on monthly basis for the work done by him and the same was to be approved by the Folding Manager. Plaintiff company was liable to make payment within one week from the date of the presentation of the bill. As per defendant he was not a very learned man and he can only sign in English but DW2 Sh. Satya Prakash was working with defendant as Supervisor during the tenure of the contract and the extensions thereof. Sh. Satya Prakash is a post graduate (M.Com). In his cross examination he had admitted that he was checking the work done by individual workers but he had denied the suggestion that the bills were verified by him. Once the work was done by the workers is checked by a person, the said work is to be consolidated in the form of the bill to be submitted to plaintiff company. It is beyond reasonable comprehension that a post graduate supervisor employed by defendant for taking proper care of the work being done by the workers employed by defendant but on the other hand he was not at all taking care of the bills being submitted to plaintiff company. DW2 had further admitted that defendant was capable of understanding about the dealings and work contracted for by defendant.

As per defendant the bills were prepared by Sh.O.P.Nagpal, PW2 who was in the employment of plaintiff company. Sh.O.P.Nagpal has stated in his evidence that the form for the work done were supplied by defendant and the details of the finally received goods from defendant were filed by him. The bills were verified by defendant as well as by Sh.Satya Prakash, supervisor employed by defendant and he has further stated that bills

were signed by them after their due verification from the records. The witness has explained in detail the process by which the calculation regarding hemming, split bound and dressing were done for the purpose of preparing the bills. He has further stated that no objection was raised at any point of time by defendant with regard to the mode of calculation. This witness cross examined at length by the Ld. counsel for defendant. He admitted that the addressing of towel means the removal of loose thread of any side of the towel or on both sides and from any part of the towel. He had denied the suggestion that the bills were prepared by plaintiff at its own. He has reiterated that the bills were prepared at the instruction of defendant and his supervisor and thereafter defendant and his supervisor used to verify the bills as per their own records and then sign the same. In spite of number of questions put by the Ld. counsel for defendant in cross examination the testimony of this witness could not be shattered. He has specifically denied the suggestion that for the purpose of calculation, 2 lengths plus 2 width of the towels were to be added.

In view of the above defendant has failed to prove that the calculation of the work done by him was not in accordance with the Agreement between parties. It is a clear cut case of an after thought as nothing has been brought on record to show that any complaint was ever lodged with plaintiff company regarding the calculation of the work done. Moreover, there are inherent contradictions between the pleading and evidence of defendant regarding the point of time when he first came to know about alleged discrepancies in the bills. Under these circumstances defendant has failed to prove that the bills had not been prepared in accordance with the Agreement dated 2.8.1976. The issue is decided against defendant and in favour of plaintiff.”(underlining added).

6. I completely agree with the aforesaid findings and conclusions of

the Trial Court inasmuch as obviously the appellant/defendant was taking a convenient stand once refund was asked from him for the excess amount paid to him. It is not open to a person to work out a contract on a particular basis, claim payments on that basis, act not only for the original period of contract but also for extensions on a particular basis, and thereafter turn around to say that the contract did not mean what the parties had acted upon under the contract.

7. 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

JANUARY 05, 2012
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