

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA No.871 /2003**

% **1st February, 2012**

M/S. CRYSTAL POWER ASSOCIATES Appellant
Through: Mr. Ram Parkash Gupta, Advocate.

VERSUS

M/S. INTERNATIONAL PUMPS & PROJECTS 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. Counsel for the appellant states that the appellant has not been in touch with him for a very long time. This case is on the Regular Board of this Court since 16.1.2012 and today it is effective item No.11 on the Regular Board. I have therefore perused the record and am proceeding to dispose of the appeal.

2. The challenge by means of this Regular First Appeal filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the

impugned judgment of the trial Court dated 13.8.2003 decreeing the suit of the respondent/plaintiff for the goods supplied. The case of the respondent/plaintiff was that the balance amount of ₹ 3,23,694/- was due from the appellant/defendant (₹ 2,36,698.10/- as principal amount and the balance amount being interest @ 18% per annum from 1.4.2000) on account of failure of the appellant/defendant to make complete payment with respect to machinery supplied. The appellant/defendant in the trial Court laid out a defence that it had sent back three alternators to the respondent/plaintiff vide challan No.01 dated 12.10.1999 for repairs to the respondent/plaintiff which were not returned and therefore the value of the alternators being ₹ 2,41,881/- was liable to be set off against the amount claimed by the respondent/plaintiff. The appellant however admitted that it paid a sum of ₹ 50,000/- to the respondent/plaintiff on 11.5.2000. In replication, respondent/plaintiff took up a stand that alternators were duly repaired and after repair the same were returned to the appellant/defendant against the challan dated 16.10.1999.

3. After completion of pleadings, the trial Court framed the following issues:

- “1. Whether the suit has been filed by a duly authorised person? OPD
2. Whether the suit of the plaintiff is barred by time? OPD
3. Whether the plaintiff is entitled to the suit amount? OPP
4. Whether the plaintiff is entitled to the interest. If so at what rate? OPP
5. Relief.”

4. The trial Court has noted that the alternators which were said to have been given by the appellant/defendant to the respondent/plaintiff for repairs were duly returned vide challans which were proved as Ex.PW1/59 and Ex.PW1/60 and both of which challans bear the acknowledgment of the defendant. The relevant observations of the trial Court are contained in para 9 of the impugned judgment which reads as under:-

“9. The plaintiff examined Sh.O.P. Sharma as PW1 who deposed that he has been authorised and empowered by the plaintiff company by virtue of the resolution passed in the meeting of board of directors. He further deposed that he has brought the original minute book containing resolution, certified true copy of which is Ex.PW1/1. He also proved on record the certificate of incorporation which is Ex.PW1/2. PW1 deposed that the goods were supplied to the defendant against invoices and the goods were excise paid. He proved on record the carbon copies of the invoices which are Ex.PW1/3 to Ex.PW1/54. He further deposed that he had brought the original account books from 1/4/97 to 2001 and the true copy of the same running into 5 pages which is Ex.PW1/55 collectively. PW1 further proved on record ‘C’ forms issued by the defendant which are Ex.PW1/56 and PW1/57. The postal receipt is Ex.PW1/58 and photo copy of the letter dated 1/1/2002 written by the plaintiff to the defendant for demand of balance payment is Mark A. He further deposed

that the goods sent for repairs by the defendants were sent back vide challans which are Ex.PW1/59 and PW1/60 and both these challans bears the acknowledgment of the defendant. The defendant examined Sh. Praveen Aggarwal as DW1 who deposed that he was the sole proprietor of the defendant firm. He further deposed that some goods were returned to the plaintiff as they were defective and damaged. He further deposed that the goods were sent by G.R. Ex.PW1/D3 and Ex.PW1/D4 and the challans by which the goods were sent are Ex.PW1/59 and PW1/60 do not bear the stamp or signature on behalf of the defendant firm. He deposed that a sum of ₹ 50000/- was paid by cheque to the plaintiff. He further deposed that the job represented by Ex.PW1/D5 was not undertaken by the plaintiff.” (underlining added).

5. In fact, the trial Court has while dealing with issue No.3 observed that the appellant/defendant has not filed a single letter on record with regard to non-return of goods after repairs and in fact ‘C’ forms were issued even thereafter. The relevant observations of the trial Court with respect to issue No.3 read as under:-

“ISSUE NO.3: WHETHER THE PLAINTIFF IS ENTITLED TO THE SUIT AMOUNT? OPP

The plaintiff has claimed a sum of ₹ 2,36,698.10 which is outstanding against the defendant for the goods purchased and received by the defendant. The case of the defendant is that they had returned 4 alternators for repairs to the plaintiff but the said alternators have not been returned to the defendant and as per the defendant the said alternators were valued at ₹ 2,41,881/- and the defendant claimed set off of the said amount. Neither any issue was framed nor pressed nor any court fees paid by the defendant on the said claimed amount.

On the other hand it is the case of the plaintiff that the said alternators were returned after repairs to the defendant vide challans Ex.PW1/59 and Ex.PW1/60. DW1 in his examination in chief has stated that the stamp and signatures on these two exhibits does not belong to his firm but in his cross examination he deposed that he has not placed any document on record which bear the stamp of his firm in the year 1999.

The receipt of the goods by the defendant is not denied but the contention of the defendant is that the defendant had returned 4 alternators to the plaintiff for repairs and after repairs the defendant has not received back the said alternators. The goods were returned by the defendant for repairs to the plaintiff vide challan dated 12/10/99 Ex.PW1/D-1 and challan dated 25/11/99 which is Ex.PW1/D-2. The plaintiff has filed the present suit in May, d2002. The defendants have not placed even a single letter on record written by it to the plaintiff with regard to the non-return of the goods after repairs. It is not even stated by the defendant in the pleadings or in the evidence that any verbal or telephonic communication was made by the defendant to the plaintiff seeking the return of the goods sent by it to the plaintiff for repairs. The defendant choose to remain silent for almost three years during the intervening period for the reasons best known to the defendant. DW1 admitted to the issuance of the 'C' forms and the said 'C' forms are Ex.PW1/56 AND PW1/57. On perusal of 'C' forms it is found that the date of issue of 'C' form Ex.PW1/57 is 18/12/2000. Now if the goods returned by the defendant for repairs to the plaintiff were not received back, it is highly improbable that the defendant would issue the 'C' forms without raising any objection/protest as regards the goods not returned by the plaintiff. As per the plaintiff the goods were returned after repairs vide challans Ex.PW1/59 and PW1/60. As already observed neither any notice or letter has been written nor any verbal request was made by the defendant to the plaintiff company asking for the return of the goods sent by it to the plaintiff for repairs. So, in these circumstances, the defendant has failed to prove that the goods were not returned by the plaintiff after repairs.

It was pointed out by the counsel for the defendant that the plaintiff's account books does not reflect a sum of ₹ 50,000/- received by it and it was also pointed out by the counsel for the defendant that bill No.47 for ₹13,400/- has been shown in between the bill No.256 and 262 which is nothing but manipulation. The plaintiff has admitted in the replication that a sum of ₹ 50,000/- was received by it from the defendant via cheque. As far as the entry of bill No.47 is concerned by simply placing the said bill in between the bills bearing No.256 and 262 cannot discredit the entire statement of account of the plaintiff when the witness PW1 had at the time of his cross examination brought the ledger books of the plaintiff company and the counsel for the defendant had the opportunity to see the same. On the contrary, the defendant has not filed or proved its statement of account. The civil matters are decided on preponderance of probabilities. So, in my considered opinion, and in view of the discussions hereinabove, the plaintiff had been able to prove its entitlement towards the cost of the goods. The plaintiff has claimed ₹ 2,36,698.10 towards the cost of goods and ₹86,995.90 towards interest @ 18% p.a. The defendant is entitled to adjustment of ₹ 50,000/- from the amount of goods which remained unpaid i.e., from ₹2,36,698.10 so, the plaintiff after adjustment is entitled to ₹ 1,86,698.10 towards the cost of the goods. This issue is accordingly decided in favour of the plaintiff and against the defendant.” (underlining added).

6. A civil case is decided on balance of probabilities. Once the alternators were supplied to the appellant/defendant, the appellant/defendant was liable to make the payment of the same. The onus that three alternators were returned back to the appellant/defendant was discharged by the respondent/plaintiff by filing and proving the challans, Ex.PW1/59 and Ex.PW1/60. Accordingly, the trial Court has rightly arrived at an

RFA No.871/2003 *Page 6 of 8*

appropriate finding and decreed the suit for recovery against the appellant/defendant.

7. There is however one aspect of the impugned judgment which requires interference and which is the high rate of interest of 15% per annum. The Supreme Court in the recent catena of judgments reported as *Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and others*, 2005 (6) SCC 678, *McDermott International Inc. v. Burn Standard Co. Ltd. and others*, 2006 (11) SCC 181, *Rajasthan State Road Transport Corporation v. Indag Rubber Ltd.*, (2006) 7 SCC 700, *Krishna Bhagya Jala Nigam Ltd. v. G.Harischandra*, 2007 (2) SCC 720 & *State of Rajasthan Vs. Ferro Concrete Construction Pvt. Ltd* (2009) 3 *Arb. LR 140 (SC)* has held that in view of the changed economic scenario where there has been consistent fall in the high rates of interest, Courts must not grant high rates of interest, more so when the litigation remains pending for a long time.

8. Accordingly, I partially allow the appeal by passing a decree of ₹ 1,86,698.10/- with interest thereon @ 7-1/2% per annum simple from 1.4.2000 till the date of payment. It is clarified that the rate of interest @ 7-1/2% per annum will be payable pendente lite and future till the decretal

RFA No.871/2003 *Page 7 of 8*

amount is paid to the respondent/plaintiff. Parties are left to bear their own costs. Decree sheet be prepared. Trial Court record be sent back.

VALMIKI J. MEHTA, J

FEBRUARY 01, 2012
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