

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

+ **RFA No.903/2003**

% **9th February, 2012**

M/S. ROYAL MERIDIAN INDIA PVT. LTD. Appellant
Through: Mr. Udayan Jain, Advocate.

VERSUS

M/S. PRINCE CO-OPERATIVE GROUP HOUSING SOCIETY 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 (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree of the trial Court dated 25.3.2003 dismissing the suit filed by the appellant/plaintiff/contractor against the defendant/cooperative society with respect to the claim for alleged extra work done with respect to a fire fighting system - the payment under the main contract of that fire fighting system having already been made.

2. The facts of the case are that the appellant/plaintiff-company was given a contract by the defendant-society for installing of a fire

fighting system in the multi-storeyed building of the cooperative society situated at plot No.54, I.P. Extn., Patparganj, Delhi. The appellant/plaintiff completed the work and claimed to have handed over the fire fighting system to the defendant-society on 19.7.1994 and which is claimed to have been acknowledged by the defendant-society. It is also further claimed that the Architect and Engineer of the defendant-society passed a bill for ₹ 21,82,572/- on 13.1.1999. It was pleaded that during the course of work the defendant only released an amount of ₹ 19,74,295/-, leaving a balance of ₹ 2,08,297/- as outstanding. It is pleaded that the Architect and Engineer of the defendant-society passed a bill for payment of ₹ 21,82,572/- after adjusting the payment of ₹ 19,74,295/-. The appellant/plaintiff claimed to have written letters dated 4.2.1999, 2.8.1999 and 28.4.2000 asking for payment and whereafter the subject suit filed for recovery of the alleged balance amount of ₹ 2,08,277/- and a sum of ₹ 92,710/- towards security amount, totaling to ₹ 3,00,987/-. A legal notice dated 9.5.2000 was also served before filing of the suit.

3. The respondent/defendant-society contested the suit on several counts. The first defence was that the suit was barred for want of notice under Section 90 of Delhi Cooperative Societies Act, 1972. The second defence was that the suit is barred by limitation because the last payment

which has been made was on 8.3.1994, the final bill was dated 16.3.1994 and the suit filed on 27.4.2001 i.e. well beyond the three year period of limitation. There was also a defence of the work of fire fighting system not being up to the mark and that in fact the society had paid an excess of ₹ 26,220/- for the work done. The main defence really was that in the final bill made by the appellant/plaintiff-company an amount of ₹ 3,02,920/- was added towards the alleged extra work and ₹72,713/- for certain additional items, however, a reference to the records of the society shows no orders were placed or approval given for the alleged additional work by the respondent/defendant.

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

- “(i) Whether the suit of the plaintiff is not maintainable for want of notice under Sec.90 of Delhi Cooperative Societies Act, 1972?
- (ii) Whether the suit is within limitation?
- (iii) Whether the plaintiff is entitled to the suit money?
- (iv) Whether the plaintiff is entitled to interest? If so, at what rate and on what amount?
- (v) Relief.”

5. The trial Court has held that not only the suit was bad for want of notice under Section 90 of Delhi Cooperative Societies Act, 1972, but also that the suit was barred by time. Importantly, it was held by the trial Court that in the original quotation for the work, no extra work was

mentioned, and no such extra work which is alleged to have been done by the appellant/plaintiff/contractor was sanctioned by the society or done. The trial Court has held that the letter, Ex.PW1/6 relied upon by the appellant/contractor was quite clearly a forged document inasmuch as the said document was really a letter which was addressed to another society but after alterations it was sought to be relied upon as if the letter, Ex.PW1/6 was sent to the respondent/defendant-society.

6. In my opinion, no fault can be found with the impugned judgment and the trial Court has rightly dismissed the suit on this count.

7. On the aspect of limitation, the trial Court has held that if a bill was really submitted in September, 1994 by the contractor for the additional work, then, it does not stand to reason that no suit was filed till beyond the period of limitation of three years as the subject suit came to be filed only on 27.4.2001. The trial Court has also rightly held to be a very strange aspect that for four years from 16.3.1994 till the writing of the letter dated 12.8.1998, Ex.PW1/10, by the Administrator to the Managing Director of the plaintiff-company, the plaintiff-company did not take any step to get the final bill verified from the official concerned. The trial Court has also noted that unfortunately there was appointed an Administrator of the society i.e. the society was not governed by its

members for a particular period of time and therefore certain unfortunate aspects emerged.

8. The relevant observations of the trial Court for holding the suit to be barred by limitation are as under:-

“ISSUE NO.2

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On behalf of plaintiff it has been contended that suit of the plaintiff is well within limitation as it was the administrator of the defendant society who had sent for verification of final bill raised by the plaintiff company to Sh. S.K. Gupta vide letter dated 17.8.98 Ex.PW1/12 and Sh. S.K. Gupta sent two bill duly verified vide letter dated 3.10.98 which is Ex.PW1/13. The final bill has also been certified by M/s. R.K.& Associates who are Architects of defendant society vide Ex.PW1/4 dated 13.1.99 and certified that the total value of the work done by the plaintiff is ₹21,82,571/-. As the final bill has been certified/verified only in October, 1998 and January, 1999, the suit of the plaintiff being filed on 27.4.2001 i.e. within a period of three years from the date of such verification is well within time.

I have considered the submissions made by Id. counsel for the plaintiff Sh. S.K. Sharma but find the same to be devoid of any force. It is the admitted case of the plaintiff that the work has been completed by it in the year 1994. Last payment has also been made to the plaintiff in March, 1994 and the final bill has been submitted by the plaintiff in September, 1994. If the final bill of the plaintiff was not cleared by the defendant society, the plaintiff could have filed a suit for recovery of the balance amount within a period of three years. The claim of the plaintiff became time barred within three years from the date of receiving the last payment or submitting the final bill if any further amount was due to the plaintiff. And because in the year 1998 the administration was keen to get fire fighting system to be put in order, the correspondence in this regard in the year 1998 does not extend the period of limitation which has already lapsed in the year 1997. In this regard letter

Ex.PW1/10 filed by the plaintiff itself becomes very relevant. The purpose of writing this letter to the plaintiff company was to put the system in order and there is a reference of the final bill of ₹ 25,96,158/- dated 16.3.94 lying on record unverified by the official concerned. It is strange situation that during the period of four years i.e. from 16.3.94 till the writing of this letter dated 12.8.98 by the administrator to the Managing Director of the plaintiff company, the plaintiff preferred not to take any step to get its final bill verified from the official concerned. It is not the case of the plaintiff that in March, 1994 itself the position was such that there was no responsible person in the defendant society to consider or pass the final bill of the plaintiff company, because it is the own case of the plaintiff that NOC was given from fire safety point of view by Dy. Chief Fire Officer on 16.5.94, copy of which is Ex.PW1/8. In these circumstances, I am of the considered view that the subsequent verification of the bill by the engineers or architects of the defendant society vide Ex.PW1/13 and 14 at the instance of Administrator does not extend the period of limitation which has already expired in the year 1997 itself. Thus, I am of the view that the present suit of the plaintiff is not within period of limitation. This issue is decided against the plaintiff.”

(emphasis supplied)

I completely agree with the findings and conclusions of the trial Court that the suit was barred by limitation.

9. So far as the aspect of the claim on merits, the trial Court has given the relevant finding and discussions under issue No.3. The trial Court has given the finding that the letter dated 27.3.1992 which was written by the appellant to the respondent/defendant-society, and which was denied by the defendant-society, was clearly a forged document. The following observations made by the trial Court are relevant:-

“A bare look at this letter shows that this letter was not addressed to the defendant society. It appears to have been addressed to some other society and subsequently some manipulations have been done in this letter by changing the name of the society not only at the place where it is addressed but also in the subject. These manipulations are clearly visible on this document dated 27.3.92. No proof of sending this letter to the defendant society either personally or by post has been placed on record by the plaintiff company. Even no consent/sanction/approval of the defendant society has been placed and proved on record to prove that the defendant society sanctioned this extra work, the value of which is ₹ 1,87,040/-. In these circumstances, it is difficult to believe that this letter Ex.PW1/6 in any way confers any right on the plaintiff to claim any payment from the defendant society over and above the total value of the work assigned which was only ₹ 19,48,075/-. It is also not disputed that against the total value of ₹ 19,48,075/-, the plaintiff has already received ₹ 19,74,295/- including TDS. So in any case the plaintiff has already received more than what was due to the plaintiff company under the award of the work vide Ex.PW1/5. It is also pertinent to mention here that the plaintiff has claimed that system was handed over to the defendant society vide letter dated 12.5.95 which is Ex.PW1/7 and is a carbon copy. The heading of this letter reads as under:-

“Handing over/taking over the system w.e.f. 12.5.94 for the Fire Fighting System installation at Prince Co. op. Group Housing Society Ltd.”

Below this heading, it is mentioned as under:-

“List of items as per first bill No.RML/94-95/Prince/Final Bill/406 dated 13.3.94 of Royale Meridian (I) Pvt.

and therefore details of the items, quantity & remarks have been given. The photocopy of the letter/NOC from the Fire Department is Ex.PW1/8 and this NOC is dated 16.5.94. I failed to understand as to how the fire fighting system could have been handed over to the defendant society without obtaining the NOC from the Delhi Fire Service which was a pre-condition while awarding the work to the plaintiff vide Ex.PW1/5. Even the handing over/taking over note Ex.PW1/7 does not bear the signature of president/secretary or any office bearer of the defendant society with stamp of the society

to show that this system has been handed over to the defendant society on 12.5.94. On being asked by the Court, Shri S.K. Sharma, Advocate for the plaintiff submitted that the system was received by Sh. S.K. Gupta who was the engineer of the society and it bears his signature. First of all the authority of Sh. S.K. Gupta to receive the system on behalf of the society itself is doubtful and secondly the date appearing below the signature of Sh. S.K. Gupta is 19.7.94 whereas the date appearing below the signature of Sh. B.B. Chhabra is 12.5.94. It is difficult to reconcile a situation where handing over is being done by the Managing Director of the plaintiff company on 12.5.94 and system has been received by Sh. S.K. Gupta on 19.7.94 and system has been received by Sh. S.K. Gupta on 19.7.94 i.e. after two months and one week from the date of so called handing over.”

(emphasis added)

The findings and conclusions of the trial Court are very persuasive and the reasons mentioned show that the claim with respect to the extra work was wholly false and misconceived. The trial Court rightly held as above that the letter dated 27.3.1992 was a forged and fabricated letter. The trial Court has also rightly referred to the fact that the appellant/plaintiff claimed the work to have been handed over on 12.5.1994 but the system has been received on 19.7.1994 i.e. after two months and one week from the so-called date of the handing over. The signature of Mr. S.K. Gupta appearing on the document of receiving the system is of 19.7.1994 whereas the signature on behalf of the appellant/plaintiff of Mr. B.B. Chhabra is of 12.5.1994.

10. In order to satisfy my judicial conscience, I put it to the counsel for the appellant that whether except mentioning that the works stated in letter dated 27.3.1992, Ex. PW1/6 have been done, what and whether any proof has been filed before the trial Court to show that the works have actually been done as mentioned in this letter, Ex.PW1/6. The counsel for the appellant had no option but to concede that with respect to each of the items mentioned in the letter, Ex.PW1/6, no other documents including the bills/invoices of purchase, which would show purchase of these items by the contractor/appellant for installation, have been filed in the trial Court. Once work of a substantial amount of ₹ 1,87,040/- is alleged to be done as stated in Ex.PW1/6, and which pertains to fixation of various electrical items, plastic plates, remotes and cables, the minimum which would have been required to be done on behalf of the appellant/plaintiff was to file the bills of purchase of such items, and probably even of payment for such items to the sellers of such items, and which admittedly has not been done. I therefore hold that the appellant/plaintiff miserably failed to justify its claim on merits also.

11. The trial Court has also finally held the suit to be barred by Section 90 of Delhi Cooperative Societies Act, 1972 inasmuch as no notice was served as required under Section 90. Since, I have already held the

suit to be barred by limitation and in fact the claim on merits also has been held to be not proved, I need not go into this aspect as to whether there was a requirement of serving of a notice upon the respondent/defendant-society in terms of Section 90 of Delhi Cooperative Societies Act, 1972.

12. In view of the above, there is no reason to interfere with the impugned judgment and decree, and accordingly, the appeal is dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

FEBRUARY 09, 2012

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