

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

+ **RFA No.481/2004**

% **21st May, 2012**

RASHTRIYA PARIYOJNA NIRMAN NIGAM LTD. Appellant
Through: Mr. Santosh Kumar with
Mr. Rajiv Ranjan Mishra, Advs.

VERSUS

M/S NAVAIR INTERNATIONAL 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. This Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment of the trial Court dated 28.1.2004 decreeing the suit of the respondent/plaintiff for a sum of ₹4,40,415.90 alongwith pendente lite and future interest at the rate of 15% per annum. The respondent/plaintiff has been held entitled to the monies being balance/unpaid price of the work of providing and fixing of fire proof doors to

the appellant/defendant.

2. The facts of the case are that the appellant/defendant placed an order dated 8.6.1998 (Ex.D1/Ex.P1) for providing and fixing the fire proof doors. The total value of contract was ₹4,00,000/-. The appellant/defendant paid an amount of ₹2,00,000/- minus TDS, and since the balance amount was not paid, the subject suit claiming ₹2,46,385.51 alongwith interest @ 21% per annum came to be filed. This amount included besides the balance amount of the contract, an amount of ₹15,100/- as transportation charges.

3. The appellant/defendant contested the suit and raised the following main objections:-

- i) Courts at Delhi had no territorial jurisdiction,
- ii) The suit was barred by limitation, and
- iii) Respondent/plaintiff was not entitled to the suit amount as specifications of the fire proof doors were not supplied to the appellant/defendant.

4. So far as the issue of territorial jurisdiction is concerned, during the course of hearing, counsel for the appellant/defendant could not dispute that part of payment was made to the respondent/plaintiff by means of a bank draft

payable at Delhi. That being so, the Civil Courts at Delhi would have

territorial jurisdiction as making of the part of the payment is part of the cause of action for filing of the suit vide : *A.B.C. Laminart Pvt. Ltd. and Anr. Vs. A.P. Agencies, Salem, AIR 1989 SC 1239.*

5. On the issue of limitation, trial Court has held that a fresh period of limitation began in view of the acknowledgement letter of the appellant/defendant dated 24.8.2001, Ex.DW1/3. The suit having been filed within 3 years of this letter, i.e. on 1.7.2002, the suit was held to be within limitation. When we refer to this letter dated 24.8.2001, Ex.DW1/3 it is found that the appellant/defendant states that the balance dues cannot be released due to technical issues. These technical issues as stated in the written statement are not providing what were the technical specifications of the fire proof doors. In my opinion, trial Court has in this regard rightly held that this letter contains an acknowledgment in terms of Section 18 of the Limitation Act, 1963 inasmuch as the explanation to Section 18 clearly states that an acknowledgment is an acknowledgment although the same omits to specify the exact nature of the property or right or it avers that time for payment has not yet come. The letter, Ex.DW1/3 while on the one hand admitting dues being payable, refuses to pay the sum stating that payment could only be made once technical specifications are provided. That being so, the trial Court has rightly held the suit to be

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within limitation on the basis of Ex.DW1/3.

6. The main point which has really been argued before this Court is with respect to the fact of disentitlement of the respondent/plaintiff to the suit amount. This argument is raised under two heads. First head is of disputing the entire balance payment. The second head is that even assuming the balance payment is payable, the said balance payment is only Rs.2,00,000/- and not a sum of Rs.2,46,386.51 which is claimed by the respondent/plaintiff in the suit. Related to the second head of argument is also the issue of high rates of pre-suit interest at 21% per annum and the fact that transportation charges were not payable under the suit contract to the respondent/plaintiff.

7. So far as the fact that technical specifications as stated in the contract were not provided, the trial Court has referred to the statement of a witness PW2 who specifically deposed that the technical specifications being the test report of CBRI, Roorki was duly given to the appellant's/defendant's officer in August or September, 1998. In my opinion, merely suggesting that this report was not given, will not help the appellant/defendant inasmuch as there is no benefit to the respondent/plaintiff in not having given the "Prototype Test Report" which is of a much earlier date i.e. 9.12.1997. Therefore, I hold that the respondent/plaintiff had satisfied the contractual requirement and given

the test report of CBRI, Roorki dated 9.12.1997, more particularly because for at least six months subsequent to the giving of the material in question, no objection was ever raised of not giving the specifications. I therefore hold that the respondent/plaintiff supplied the fire proof doors, gave the necessary specifications of the material in terms of the report of CBRI, Roorki, Ex.PW2/1(colly.), and therefore, the defence of the appellant/defendant has no substance.

8. In my opinion, however, the trial Court has erred in awarding pre-suit interest at the rate of 21% per annum and also transportation charges of Rs.15,100/- as claimed by the respondent/plaintiff. In terms of para 7 of the contract dated 8.6.1998 (Ex.D1/Ex.P1) the freight charges were to be paid by the respondent/plaintiff. That being so, the respondent/plaintiff cannot raise the bills for transportation charges, and is therefore not entitled to the sum of Rs.15,100/- as claimed. Therefore, the balance amount payable to the respondent/plaintiff is only to be Rs.2,00,000/- as on 24.9.1998.

9. The Supreme Court in the recent chain 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* RFA No.481/2004

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 Courts must reduce the high rates of interest in view of the changed economic scenario where there has been consistent fall in the rates of interest. A Division Bench of the Court in the case of *Pandit Munshi Ram Associates vs. DDA, 2010 (3) Arb. Law Reporter 284* has also observed that high rates of pre-suit interest can be interfered with as the same can be treated as violation of public interest and public policy. Accordingly, in the facts and circumstances of the present case, I deem it fit that the appeal is partially allowed by granting decree in favour of the respondent/plaintiff for a sum of Rs.2,00,000/- alongwith interest at 9% per annum simple from 24.9.1998 till the filing of the suit and thereafter at the rate of 8% per annum simple pendente lite and future interest till payment.

10. Accordingly, appeal is partially allowed as stated above. Parties are left to bear their own costs. Decree sheet be prepared.

11. The amount deposited in this Court alongwith accrued interest will be available to the respondent/plaintiff towards appropriate satisfaction of

the impugned judgment as modified by today's judgment. Trial Court record be sent back.

VALMIKI J. MEHTA, J

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