

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

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Date of decision: 26th September, 2013

+ **RFA 804/2006**

M.K.JAIN

..... Appellant

Through:

Mr. Sanjiv Bahl & Mr. Eklavya Bahl, Adv.

Versus

S.S.BEDI

..... Respondent

Through:

Ms. Sangeeta Chandra & Mr. Deepak Khadaria, Adv.

AND

+ **RFA 805-06/2006**

M.K.JAIN & ANR

..... Appellants

Through:

Mr. Sanjiv Bahl & Mr. Eklavya Bahl, Adv.

Versus

S.S.BEDI

..... Respondent

Through:

Ms. Sangeeta Chandra & Mr. Deepak Khadaria, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. RFA No.804/2006 is preferred against the judgment and decree dated 30th October, 2006 of the learned Additional District Judge, Delhi in suit No. 70/06/1997 filed by the respondent and decreeing the said suit for recovery of Rs.9,14,573.90 alongwith interest at 10% per annum from 6th January, 1995 till realization against the appellant.

2. RFA No.805-806/2006 is preferred against the judgment and decree also dated 30th October, 2006 of the same learned Additional District Judge in suit No.73/06/1997 filed by the appellants for recovery of Rs.9,24,000/- from the respondent and of dismissal of the said suit.

3. Both the appeals were admitted for hearing. Vide order dated 18th December, 2006 in RFA No.804/2006, subject to appellant depositing the entire decretal amount in this Court, execution of the money decree against the appellant was stayed; the said amount was also ordered to be released in favour of the respondent subject to furnishing security. The amount is stated to have been so deposited and released to the respondent against security. The hearing of the appeals was expedited for the reason of the respondent being a senior citizen. The counsels have been heard.

4. The respondent instituted the suit from which RFA No.804/2006 arises pleading

- i. that he was carrying on profession as an interior designer;
- ii. that the appellant in or about July, 1994 wanted to carry out the complete interior decoration of his office under the name and style of M/s Chelsea Mills at B-78/79, Mayapuri

- Industrial Area, Phase I, New Delhi and the respondent submitted drawings / proposals / quotations under the supervision of the appellant Architect Shri Sudesh Prabhakar;
- iii. that in response thereto work orders were placed on 12th July, 1994 by the appellant's Architect under the instructions of the appellant on the respondent;
 - iv. that it was agreed that 25% value of the work shall be paid by the appellant alongwith the work order;
 - v. the total quoted value was Rs.19,67,222/- out of which certain items were deleted or reduced by the appellant and the balance value of the job work was estimated at Rs.16 lacs approximately and the appellant made a payment of Rs.4 lacs alongwith the work order signed by the Architect Sudesh Prabhakar;
 - vi. that the respondent started executing the work w.e.f. 13th July, 1994 and the appellant was supposed to make the payment as the work progressed; accordingly, the second stage bill of Rs.4 lacs was submitted on 13th August, 1994 but was not paid on the pretext of the appellant being short of funds;
 - vii. that the third stage bill of Rs.4 lacs was submitted on 30th September, 1994 but payment thereof also was not released;

- viii. that the respondent continued the work for the 4th stage during the month of October, 1994 with the hope that the payment shall be released but ultimately the work had to be stopped in the last week of November, 1994 since the appellant failed to make any payment save for the initial payment of Rs. 4 lacs;
- ix. that the appellant also placed the orders for some electrical, civil, plumbing and wood work on the respondent for which also quotations were submitted on 30th September, 1994 and which works were also executed alongwith the main work of interior decoration;
- x. that the respondent submitted his final bill on 6th January, 1995 which was received by the Secretary of the appellant on 17th January, 1995, with a copy to the Architect who verified the same on 27th January, 1995 and reduced the same to Rs.15,14,573.90;
- xi. that the appellant instead of making payment of the balance amount of Rs.11,14,574/- issued a legal notice dated 26th November, 1996 to the respondent alleging that the respondent had obtained a friendly loan of Rs.4 lacs from the appellant and yet a further friendly loan of Rs. 2 lacs with promise to return the same and demanding payment thereof.

Accordingly, the suit for recovery of the balance principal amount of Rs.11,14,574/- together with interest at 24% per annum till institution of suit amounting Rs.6,24,161 i.e. for total of Rs.17,38,735 was filed.

5. The appellant contested the said suit, by filing written statement, denying that the appellant had ever engaged the respondent to carry out interior decoration of his office or that the respondent had submitted any drawings/proposals/quotations or carried out any work and pleading that the respondent had obtained a friendly loan of Rs.6 lacs from the appellant through cheque dated 30th July, 1994 for Rs.4 lacs and in cash for Rs.2 lacs in October, 1994 and which amount the respondent had failed to return to the appellant inspite of legal notice dated 26th November, 1996 (supra) and for recovery of which the appellant had filed the suit from which the other appeal arises.

6. The respondent filed a replication reiterating his claim and denying the contents of the written statement of the appellant/defendant.

7. Needless to state that the other suit filed by the appellant (from which RFA 805-06/2006 arises) was for recovery of the amount of Rs.4 lacs (which according to the respondent had been received as advance

against the interior decoration work) plus Rs. 2 lacs stated to have been given as loan, together with interest and the respondent contested the said suit denying any loan transaction and denying receipt of Rs.2 lacs.

8. On the pleadings of the parties, the following issues were framed on 11th October, 2001 in the suit from which RFA 804/2006 arises.

- “i. Whether plaintiff has executed the work in office-cum-factory at D-78/79, Mayapuri Industrial Area, Phase – I, New Delhi belonging to the defendant? OPP.
- ii. Whether any friendly loan was advanced by the defendant to the plaintiff or a sum of Rs. Four lakh was advanced towards the cost of estimated work executed by the plaintiff in July, 1994? OPP
- iii. Whether any drawing was sent by the architect Sh. Sudesh Prabhakar allegedly appointed by the defendant and whether any work was certified by the alleged architect and if so to what effect? OPP.
- iv. Whether the plaintiff has no cause of action from the present suit? OPP
- v. Whether the present suit is maintainable under Order 37 of CPC? OPP

- vi. Whether there is any privity of contract between the parties and if so its effect? OPD
- vii. Whether any quotations was invited from the plaintiff for the interior decoration for the office of the defendant in July, 1994 and whether the defendant approved the quotations of the plaintiff? OPP
- viii. Whether the plaintiff is entitled to the relief claimed in the suit? OPP.”

9. On the pleadings in the suit from which RFA 805-06/2006 arises, the following issues were framed on 11th October, 2001.

- “i. Whether the plaintiff is entitled to the suit amount of Rs.6,00,000/- from the defendant alongwith the interest, if so, at what rate? OPP.
- ii. Whether cheque dated 30.07.1994 was given to the defendant towards part payment of the order placed before the plaintiffs? OPD.
- iii. Whether any further sum of Rs.Two Lakhs was placed by the plaintiffs to the defendant as a loan or towards work executed? OPD.
- iv. Relief.”

10. The two suits were clubbed for the purpose of recording evidence vide separate order dated 28th February, 2005 in each of the two suits.

11. The appellant examined himself only as a witness. The respondent, besides examining himself, examined the Architect Mr. Sudesh Prabhakar.

12. Vide separate judgments in the two suits, though identical, the suit for recovery of money filed by the appellant has been dismissed and the suit for recovery of money filed by the respondent has been decreed against the appellant, finding/ observing/ holding -

- i. that the stand of the appellant, of having given a friendly loan to the respondent, is falsified by the document Exhibit PW1/D-11 in which the amount of Rs.4 lacs was recorded as being given as an advance;
- ii. advance and friendly loan are not one and the same thing;
- iii. that the case of the appellant of having given turnkey job with respect to his office to the Architect Mr. Sudesh Prabhakar did not appear to be true as it was not denied by the appellant that the cheque for the amount of Rs.4 lacs was given directly to the respondent;

- iv. thus it was established that Mr. Sudesh Prabhakar was merely an Architect/consultant whereas the respondent was the contractor for the execution of the job; Mr. Prabhakar had also testified of having verified the bill raised by the respondent after making correction thereon;
- v. that the respondent had proved the copy of the quotation dated 7th July, 1994, the original work order dated 12th July, 1994, the original drawings of interior layout, AC ducting, lighting layout etc;
- vi. the bills, cash memos and challans of various materials, bills of labour contractors, quotations regarding electrical work, quotation for civil plumbing and woodwork as well as ledgers maintained in respect of various sub-contractors also showed the respondent to have at his cost carried out the works of interior decoration in the premises of the appellant;
- vii. that Shri Prabhakar in his deposition has fully corroborated the case of the respondent and there is no reason to disbelieve him;
- viii. that it is thus established that Shri Prabhakar was merely an architect consultant whereas the respondent was the contractor for execution of the job;

- ix. although the respondent as well as Shri Prabhakar were extensively cross examined by the counsel for the appellant but the veracity of their evidence could not be demolished;
- x. that there is no documentary material on record like loan agreement, receipt, pronote etc to support the case of the appellant of having given a loan to the respondent;
- xi. the appellant had also not produced any witness in support of his case of having given the loan;
- xii. that it was the case of the appellant also that the respondent was not known to him and was introduced to him by the architect Shri Sudesh Prabhakar;
- xiii. if it was so then extending the facility of friendly loan for a huge amount of Rs. 6 lacs to a stranger cannot be believed, that too without executing any necessary documents like loan agreement, pronote etc.;
- xiv. thus the stand of the appellant was false, fabricated and afterthought;
- xv. the stand of the appellant was also falsified from Exhibit PW1/D-11 in which it was stated that the amount of Rs. 4 lacs was received as a advance;
- xvi. that the appellant had failed to establish his case of giving a personal loan;

- xvii. on the contrary the respondent had successfully proved that Rs.4 lacs was advanced towards the cost of estimated work to be executed by the respondent for the appellant;
- xviii. that the appellant had conceded in his statement, that Shri Sudesh Prabhakar was his architect in the year 1994; that the various drawings which were produced by the respondent were prepared by Shri Prabhakar on instructions of the appellant;
- xix. that the appellant had failed to establish that Shri Sudesh Prabhakar had colluded with the respondent; rather the appellant conceded that the works done by the respondent were got performed through Shri Prabhakar and Shri Prabhakar had engaged the respondent to perform the said works;
- xx. Shri Prabhakar having verified that the work of Rs. 15,14,573.90 had been done by the respondent and in the absence of any rebuttal by the appellant, the version of the respondent is to be believed;

accordingly, believing the version of the appellant of having paid 6 lacs to the respondent i.e. Rs. 4 lacs by cheque and Rs. 2 lacs by cash and after deducting the said amount from the value of Rs. 15,14,573.90 of the work done, a decree for Rs.9,14,573.90 was passed in favour of the

respondent and the claim of the appellant for recovery of Rs. 6 lacs with interest was dismissed.

13. The counsel for the appellant has argued –

- i. that though the final bill is dated 6th January, 1995 but no demand thereagainst was made by the respondent for a period of nearly two years till 17th December, 1996 (when the legal notice was sent) when the appellant demanded back the amount of Rs. 6 lacs from the respondent;
- ii. thus it ought to have been held that the case of the respondent was an afterthought and in collusion with Shri Sudesh Prabhakar;
- iii. that the appellant had given a turnkey contract for interior decoration to the Architect Shri Sudesh Prabhakar and is not liable to pay the persons from whom Shri Sudesh Prabhakar may have got the work done and the liability of the appellant is only to Shri Prabhakar;
- iv. that in the balance sheet of the respondent proved before the Trial Court, there is no entry of the amount in which the decree has been passed against the appellant or of the sum of Rs.15,14,573.90 as receivable by the respondent;

- v. had the said amount been due from the appellant to the respondent, it would have been shown in the books;
- vi. that though the respondent had denied the receipt of Rs. 2 lacs in cash but the learned Additional District Judge had believed the same and there is no appeal by the respondent thereagainst;
- vii. it thus stands established that an amount of Rs.1 lac was received by the respondent from the appellant on 7th October, 1994 as well as on 12th October, 1994; if that was so, there was no occasion for the respondent to in the month of November, 1994 stop the work as was admittedly done and the entire story setup by the respondent is falsified;
- viii. that Shri Prabhakar earlier an Architect of the appellant had fallen out with the appellant and had colluded with the respondent.

14. Per contra, the counsel for the respondent has argued that no adverse inference can be drawn against the respondent for not rushing to the Court for recovery of his dues as commercial men always hesitate from approaching the Court till the last minute; that the appellant has not furnished the proof of payment of Rs. 9.91 lacs allegedly paid to Shri Prabhakar for the work done; that Shri Prabhakar was summoned as a

witness and was not produced by the appellant on his own; that the appellant has failed to lead any evidence of having given a turnkey contract to Shri Prabhakar; that the version of the appellant could not be borne out inspite of extensive cross examination of Shri Prabhakar.

15 The counsel for the appellant in rejoinder has argued that a contractor who has incurred out pocket expenses towards labour and material in carrying out the work, as the respondent claims to have done, would not sit quietly for two years; that the malafides of the respondent is also apparent from the denial of receipt of Rs.2 lacs in cash in spite of having executed the receipt thereof and in which respect finding has been returned in favour of the appellant and which finding is not challenged by the respondent in this appeal.

16. I have considered the rival contentions and have perused the records of the two suits.

17. The appellant (while appellant No.1 is M.K. Jain, Proprietor M/s Chelsea Mills, appellant No.2 is M.K. Jain individual) in his suit (and from which RFA Nos.805-06/2006 arises) which was instituted on or about 13.03.1997, save for stating that he had given a friendly loan of

Rs.6,00,000/- to the respondent, did not elaborate as to how he had met the respondent or what was his relationship with the respondent and did not mention anything at all about the work of interior decoration done by the respondent at his premises, even if as a sub-contractor of architect Sudesh Prabhakar.

18. The respondent instituted his suit (and from which RFA No.804/2006 arises) on or about 19.04.1997 initially under Order 37 of the CPC and to which an application dated 01.09.1997 for leave to defend was filed by the appellant. In the said application also the appellant denied that any work of interior decoration had been done by the respondent at the premises of the appellant and rather took a plea that the respondent had not pleaded the authority under which he had carried out the said work or the authority of the architect to engage the respondent on behalf of the appellant; though a plea was vaguely taken that the respondent was taking advantage of the friendly cooperation extended by the appellant to the respondent, in collusion with the alleged architect but even then it was not pleaded that the appellant had given a turnkey contract to the architect or as to when the relationship of the appellant with the architect had soured.

19. Leave to defend was granted to the appellant and a written statement dated 15.03.2001 was filed by the appellant. Even in the said written statement, there was no plea of the appellant having given a turnkey contract of renovation to the architect or having settled the claim of the architect. Rather in the written statement, the plea of collusion of the respondent with the architect is also missing.

20. The appellant in his affidavit by way of examination-in-chief merely stated that he had not authorized Sh. Sudesh Prabhakar, architect to invite any quotations or place any orders on the respondent and that no work was done by the respondent in the office of the appellant. However in his cross-examination, a) he admitted having given the work of renovation / addition to Sh. Sudesh Prabhakar; b) he admitted the said renovation work having started in the month of June, 1994 and having continued for eight / nine months; c) he could not give proof of the payments claimed of Rs.9,91,292/- to Sh. Sudesh Prabhakar being the amount entered in the appellant's books as spent on the said works of renovation / addition; d) he claimed that he had an agreement in writing with Sh. Sudesh Prabhakar, Architect for doing the work on turnkey basis but stated that the said agreement in writing was no longer with him; e) he admitted that Sh.

Sudesh Prabhakar remained his architect till July, 1995; f) he could not say whether the bill of M/s Indico also engaged for execution of certain works had been verified by Sh. Sudesh Prabhakar, Architect; g) he stated that he was not aware whether the respondent was entitled to payment of Rs.11,15,574/-; h) he admitted that the Sh. Sudesh Prabhakar, Architect was known to him since 1985 and had got done the interior decoration work of his farmhouse also; i) he admitted the drawings as per which the respondent claimed to have done the work pertained to his office; j) he stated that he did not know whether Sh. Sudesh Prabhakar, Architect had granted contracts to other people for execution of the work; k) he though claimed that the entire work of renovation was for about Rs.10,00,000/- to Rs.11,00,000/-, could not furnish proof of having made payments to Sh. Sudesh Prabhakar.

21. I have also enquired from the counsel for the appellant whether the appellant had cross examined the respondent on the aspect of there being no entries of receivables in his balance sheet.

22. The answer is in the negative.

23. In the absence of appellant cross-examining the respondent on the said aspect and without the appellant giving an opportunity to the respondent to explain the absence of any entry in his books of receivables from the appellant, the appellant cannot be permitted to take advantage thereof. It is well nigh possible that as per the accounting practice applicable to / or followed by the respondent, the respondent was not required to / or make any entry in his balance sheet of the amounts recoverable from the persons for whom work had been carried out but who had not paid till then.

24. As far as the only other argument of the appellant of the respondent having not raised any demand in writing for two years and not till the issuance of the notice by the appellant calling upon the respondent to refund Rs.6,00,000/- is concerned, I, in view of the other evidence, am unable to find any merit therein. It is the testimony of the respondent that he had been chasing up the matter of payment with the appellant though not in writing. Such conduct is not uncommon particularly at the instance of contractors who, considering the recurring requirement of the clients of the work they perform generally do not enter into legalese and make an attempt to first extract the held up payments without taking recourse to the

Court of law. Rather, it appears that the appellant upon being pestered by the respondent for payment got issued the notice demanding refund of the advance paid to the respondent.

25. I had during the course of arguments enquired from the counsel for the appellant whether the appellant denies the work done in the premises. The counsel has fairly stated that he does not deny the work having been done and his plea is of the work having been done by Sh. Sudesh Prabhakar, Architect and the privity of the appellant being with Sh. Sudesh Prabhakar, Architect only and the respondent engaged by Sh. Sudesh Prabhakar, Architect having no right to claim the monies from the appellant.

26. However that as aforesaid is not the case with which the appellant has come to the Court. The appellant cannot be permitted to on the basis of arguments, make out a case with which he has not approached the Court.

27. It is undoubtedly true that the respondent has been unable to produce any document of assignment of work to him by the appellant. However it is not as if the same is fatal. The practice of the trade of carrying out such

works generally entails the employer entrusting the work to a consultant / architect who engages various contractors for carrying out various works and verifies the payments due to them. However it is not as if the consultant / architect becomes personally liable for payment in such cases and the liability for payment for the work done remains of the client / employer only.

28. Moreover in the present case, the proof of engagement of the respondent by the appellant and not by the Architect has come from the appellant himself. As aforesaid, the factum of the respondent having carried out work of interior decoration at the premises of the appellant is not in dispute. The version of the appellant of having advanced Rs.6,00,000/- to the respondent as friendly loan is preposterous. Ordinarily a payment from a person in whose premises the work of interior decoration is being done by a contractor, to the contractor, would be towards the said work only and not towards any loan. Had the appellant been not personally liable to the respondent, the payments would have flown from the appellant to Sh. Sudesh Prabhakar, Architect and there would have been no payment directly from the appellant to the respondent. Such payments as aforesaid are not only in cheque drawn personally by the appellant but also

in cash, receipts whereof were produced from the custody of the appellant. Had the appellant given a turnkey contract to Sh. Sudesh Prabhakar Architect, the payments to the respondent would have flown from Sh. Sudesh Prabhakar, Architect only and which is not found to be so.

29. Not only has the appellant totally failed to even produce the proof of having paid Sh. Sudesh Prabhakar, Architect but it is also not the case of the appellant that Sh. Sudesh Prabhakar, Architect also is claiming from him for the same work. The only inference therefrom can be of the appellant being liable directly to the respondent.

30. Once we get over the aforesaid hurdle, there is otherwise no challenge to the verification of the bills of the respondent done by the Sudesh Prabhakar, Architect and as per which the balance amount of Rs.9,91,292/- is due from the appellant to the respondent.

31. Though undoubtedly, the respondent attempted to deny receipt of Rs.2,00,000/- in cash and which denial has been found to be false but such falsity indulged into by the respondent cannot relieve the appellant of his liability to the respondent.

32. Both the appeals therefore are found to be without any merit and are dismissed with costs. Counsel fee assed at Rs.20,000/-.

33. Decree sheet be drawn up.

34. The security earlier furnished by the respondent at the time of withdrawing the decretal amount is released and the Registry is directed to, after making the necessary endorsements, release the said security to the counsel for the respondent.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 26th, 2013
'm/'gsr'.