

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

DECIDED ON: 20th May, 2013

+ **RFA (OS)No. 51/2013**

TOWER VISION INDIA PVT. LTD.

..... Appellant

Through:

Mr. Gopal Jain and Mr. Gaurav
Singh, Advs.

versus

ORION SECURITY SOLUTIONS

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

% **HON'BLE MR. JUSTICE NAJMI WAZIRI**

(OPEN COURT)

1. This appeal is directed against the order and preliminary decree under Order XII Rule 6 CPC whereby the appellant is required to pay Rs.28,79,334/- together with interest thereon at the rate of 10% per annum from 3rd February, 2011 till the date of payment.

2. The facts of the case, briefly stated, are that the appellant had arranged with the respondent/plaintiff for supply of manpower which continued till November 2009 - when the arrangement was terminated by the appellant. In a suit for recovery of outstanding dues, the service provider respondent/plaintiff claimed against the appellant a sum of Rs.1,32,01,428.97 together with interest, etc. The plaintiff contended that in their letter of 3rd February, 2011 and also in their written statement the

appellant/defendant had admitted to Rs.28,79,334/- being payable. Accordingly, a preliminary decree was sought for the admitted amount on the basis of the admissions, which was granted by the impugned order.

3. The contention of the appellant is that the aforesaid admitted liability was conditional upon NOC being obtained and provided by the plaintiff/respondent from the latter's local sub-contractors. The plaintiff had defaulted in this regard. As a consequence thereof the subcontractors were disturbing the operations and functioning of and are also demanding their dues from the appellant/defendant. The appellant further contends that the respondent/plaintiff is, in the first instance, liable to be pay the outstanding dues of the subcontractors and only thereafter the aforesaid admitted amounts of Rs.28,78,334/- would become payable. However, the appellant, has not been able to show anywhere from the pleadings whether there was any privity of contract between them and the local subcontractors who were allegedly demanding payments from the appellant/defendant. They have also been unable to show from the suit records that the payments of admitted/outstanding dues to the plaintiffs/defendant were conditional upon NOC being furnished by the latter apropos the dues of the subcontractors. Indeed, admittedly no written contract/agreement has been referred to or brought on record by either the appellant or the plaintiff in the suit because admittedly no such document was ever signed. Indeed, the Learned Single Judge observes in this regard:

“9. I have enquired from the counsel for the defendant whether the defendant has any privity of contract or any liability to

make the payments to the said sub-contractors.

10. The answer is in the negative.

11. More than three years have lapsed since the relationship between the parties came to an end. I am of the opinion that merely because somebody claiming under the plaintiff may have been creating a nuisance for the defendant or demanding any monies from the defendant is no ground for the defendant to withhold the monies of the plaintiff, specially when the defendant has been unable to show any such agreement between the parties or any such obligation of the plaintiff before being entitled to the monies due from the defendant. In the present day times, such pleas of persons having no claims whatsoever threatening a party to withhold the dues of another cannot be entertained and if entertained would bring the commercial world to a halt.

4. Reference, in the written submission, to an assent by a representative of the plaintiff during his meetings with the appellant in June, 2010 and February, 2011 to supply NOCs is not only vague, but also irrelevant and of no consequence. The said alleged meeting was after the arrangement for supply of manpower was terminated. The liability towards payment for services already rendered till November 2009 had already accrued on the terms of the arrangement till that date. Therefore, the said supposed assent could not purport to impose a condition upon the respondent/plaintiff to supply NOCs prior to payments being effected by the appellant/defendant. The appellant/defendant could not *suo moto* arrogate to itself the position of

a guarantor for the local subcontractors, whoever they may be, for payments that may be due to them from the respondent/plaintiff. Therefore, i) insofar as there is neither privity of contract between the appellant/defendant and the local subcontractors for payment of the latter's dues, whatever they may be, by the respondent/plaintiff, nor ii) any evidence of an agreed condition or contract which could qualify the payment of the admitted outstanding amounts, the contentions of the appellants are without basis. Consequently, the plaintiff was entitled to the decree on admission under Order XII Rule 6 CPC. The learned Single Judge has therefore, rightly rejected the aforesaid arguments of the appellant/defendant. This Court finds no reason to disturb the order and decree of the learned Single Judge.

Accordingly, the appeal is dismissed.

S. RAVINDRA BHAT, J
(JUDGE)

NAJMI WAZIRI, J
(JUDGE)

MAY 20, 2013
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